

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 469.

THE UNITED STATES OF AMERICA, THE INTERSTATE
COMMERCE COMMISSION, NATIONAL COUNCIL OF
TRAVELING SALESMEN'S ASSOCIATIONS ET AL., AP-
PELLANTS,

vs.

THE NEW YORK CENTRAL RAILROAD COMPANY, AT-
LANTIC CITY RAILROAD COMPANY, ATLANTIC & ST.
LAWRENCE RAILROAD COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MASSACHUSETTS.

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1-3 District Court of the United States for the District of Massachusetts.

THE NEW YORK CENTRAL RAILROAD COMPANY; ATLANTIC City Railroad Company; Atlantic & St. Lawrence Railroad Company; Baltimore, Chesapeake & Atlantic Railway Company; Bangor & Aroostook Railroad Company; Boston & Maine Railroad; Buffalo, Rochester & Pittsburgh Railway Company; Central New England Railway Company; The Central Railroad Company of New Jersey; Central Vermont Railway Company; The Chicago & Erie Railroad Company; The Chesapeake & Ohio Railway Company; Chicago, Detroit & Canada Grand Trunk Junction Railroad Company; The Cincinnati, Indianapolis & Western Railroad Company; The Cincinnati Northern Railroad Company; The Cincinnati, Lebanon & Northern Railway Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; The Delaware & Hudson Company; The Delaware, Lackawanna & Western Railroad Company; Detroit, Grand Haven & Milwaukee Railway Company; Detroit & Toledo Shore Line Railroad Company; Erie Railroad Company; Grand Rapids & Indiana Railway Company; Grand Trunk Western Railway Company; The Lake Erie & Western Railroad Company; Lehigh Valley Railroad Company; The Long Island Railroad Company; Maine Central Railroad Company; Maryland, Delaware & Virginia Railway Company; The Michigan Central Railroad Company; The Monongahela Railway Company; New Jersey & New York Railroad Company; The New York, Chicago & St. Louis Railroad Company; New York Connecting Railroad Company; The New York, New Haven & Hartford Railroad Company; New York, Ontario & Western Railway Company; New York, Susquehanna & Western Railroad Company; The Pennsylvania Railroad Company; The Philadelphia & Reading Railway Company; The Pittsburgh & Lake Erie Railroad Company; The Pittsburg, Shawmut & Northern Railroad Company, and Henry S. Hastings, receiver; Port Reading Railroad Company; Richmond, Fredericksburg & Potomac Railroad Company; The Rutland Railroad Company; Toledo, St. Louis & Western Railroad Company; West Jersey & Seashore Railroad Company; Western Maryland Railway Company; and the Wheeling & Lake Erie Railway Company, petitioners,

against

THE UNITED STATES OF AMERICA, RESPONDENT.

In Equity.
No. 1808.

Filed March 30, 1923.

To the Honorable Judges of the District Court of the United States for the District of Massachusetts:

The New York Central Railroad Company, a corporation of the States of New York, Pennsylvania, Ohio, Indiana, Michigan, and Illinois; Atlantic City Railroad Company, a corporation of the State of New Jersey; Atlantic & St. Lawrence Railroad Company, a corporation of the States of Maine, New Hampshire, and Vermont; Baltimore, Chesapeake & Atlantic Railway Company, a corporation of the State of Maryland; Bangor & Aroostook Railroad Company, a corporation of the State of Maine; Boston & Maine Railroad, a corporation of the States of New Hampshire, Massachusetts, New York, and Maine; Buffalo, Rochester & Pittsburgh Railway Company, a corporation of the States of New York and Pennsylvania; Central New England Railway Company, a corporation of the State of New York; Central Vermont Railway Company, a corporation of the State of Vermont; The Central Railroad Company of New Jersey, a corporation of the State of New Jersey; The Chesapeake & Ohio Railway Company, a corporation of the State of Virginia; Chicago & Erie Railroad Company, a corporation of the State of Indiana; Chicago, Detroit & Canada Grand Trunk Junction Railroad Company, a corporation of the State of Michigan; The Cincinnati, Lebanon & Northern Railway Company, a corporation of the State of Ohio; The Cincinnati, Indianapolis & Western Railroad Company, a corporation of the State of Indiana; The Cincinnati Northern Railroad Company, a corporation of the State of Ohio; The
5 Cleveland, Cincinnati, Chicago & St. Louis Railway Company, a corporation of the States of Ohio and Indiana; The Delaware & Hudson Company, a corporation of the State of New York; The Delaware, Lackawanna & Western Railroad Company, a corporation of the State of Pennsylvania; Detroit, Grand Haven & Milwaukee Railway Company, a corporation of the State of Michigan; Detroit & Toledo Shore Line Railroad Company, a corporation of the State of Michigan; Erie Railroad Company, a corporation of the State of New York; Grand Rapids & Indiana Railway Company, a corporation of the States of Michigan and Indiana; Grand Trunk Western Railway Company, a corporation of the States of Indiana and Michigan; The Lake Erie & Western Railroad Company, a corporation of the State of Ohio; Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania; The Long Island Railroad Company, a corporation of the State of New York; Maryland, Delaware & Virginia Railway Company, a corporation of the States of Maryland and Delaware; Maine Central Railroad Company, a corporation of the State of Maine; The Michigan Central Railroad Company, a corporation of the State of Michigan; The Monongahela Railway Company, a corporation of the State of Pennsylvania; New Jersey & New York Railroad Company, a corporation of the States

of New York and New Jersey; The New York Connecting Railroad Company, a corporation of the State of New York; The New York, Chicago & St. Louis Railroad Company, a corporation of the States of New York, Pennsylvania, Ohio, and Indiana; The New York, New Haven & Hartford Railroad Company, a corporation of the States of Connecticut, Rhode Island, and Massachusetts; New York Ontario & Western Railway Company, a corporation of the State of New York; New York, Susquehanna & Western Railroad Company, a corporation of the States of New Jersey and Pennsylvania; The Pennsylvania Railroad Company, a corporation of the State of Pennsylvania; The Philadelphia & Reading Railway Company, a corporation of the State of Pennsylvania; The Pittsburgh & Lake Erie Railroad Company, a corporation of the State of Pennsylvania; The Pittsburgh, Shawmut & Northern Railroad Company, and Henry S. Hastings, receiver, a corporation of the States of New York and Pennsylvania; Port Reading Railroad Company, a corporation of the State of New Jersey; Richmond, Fredericksburg & Potomac Railroad Company, a corporation of the State of Virginia; The Rutland Railroad Company, a corporation of the States of New York and Vermont; Toledo, St. Louis & Western Railroad Company, a corporation of the State of Indiana; West Jersey & Seashore Railroad Company, a corporation of the State of New Jersey; Western Maryland Railway Company, a corporation of the States of Maryland and Pennsylvania; and the Wheeling & Lake Erie Railway Company, a corporation of the State of Ohio, bring this their petition against the United States of America, and hereby sue to enjoin, set aside, suspend, and annul an order of the Interstate Commerce Commission, a commission existing by virtue of an act of Congress of February 4, 1887, entitled "An act to regulate commerce," and the acts amendatory thereof and supplemental thereto, and thereupon your petitioners complain and say:

I.

7 Since March 1, 1920, your petitioners have been and now are common carriers engaged in the business of operating steam railroads located in the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Ohio, Illinois, Indiana, Michigan, West Virginia, and in the Dominion of Canada, and have been and now are subject to the provisions of the interstate commerce act in so far as the same are constitutional. All of your petitioners are members of the Eastern group as established by the commission in Increased Rates, 1920, pursuant to the provisions of section 15a of the interstate commerce act. For many years prior to December 28, 1917, at which time the President of the United States took possession and assumed control of the railroads of your petitioners, petitioners or their predecessors were engaged in the business of operating the aforesaid steam railroads and engaged in interstate commerce.

II.

This suit is brought to enjoin, set aside, suspend, and annul an order of the Interstate Commerce Commission and is instituted under the provisions of the interstate commerce act and of the act of October 22, 1913, entitled "An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and thirteen and for other purposes," and also under the general equity jurisdiction of this court.

III.

The Boston & Maine Railroad is a corporation of the States of New Hampshire, New York, Massachusetts, and Maine, having its principal operating office in the District of Massachusetts, and the matter complained of under the order of the Interstate Commerce Commission of March 6, 1923, hereinafter referred to, arises in said District of Massachusetts.

IV.

Section 22 of the interstate commerce act was amended by an act of Congress of August 18, 1922, so as to number the then existing section as paragraph 1 and to add two paragraphs which directed the Interstate Commerce Commission to require each carrier by railroad subject to the act to issue interchangeable scrip coupon or mileage books at just and reasonable rates under rules and regulations, and with exemptions to be prescribed by the commission. For convenience section 22 as amended is printed in full, marked Exhibit A, and made a part hereof.

V.

Pursuant to the provisions of section 22, the commission on August 23, 1922, issued an order providing for an investigation, a copy of which order is printed in full, marked Exhibit B, and made a part hereof.

VI.

Pursuant to the provisions of the order dated August 23, 1922, a hearing was had before the commission on September 26 and 27, 1922, at which hearing the carriers made appropriate reservations of their legal and constitutional rights to contest any order which the commission might make in this matter, and thereafter proceeded to introduce testimony in response to the questions propounded in said order of August 23, 1922, of the commission. Certain organizations, including organizations of commercial travelers, also introduced testimony in response to said questions, and thereafter the matter was argued before the commission on November 15, 1922, and thereafter on January 26, 1923, the commission made its report

and rendered its opinion, a copy of which, together with dissenting opinions and appendices are printed in full, marked Exhibit C, and made a part hereof. Said report and opinion after summarizing the evidence and making various findings of fact made the following concluding finding:

"We find and conclude that on and after March 15, 1923, carriers by rail, respondents herein, enumerated in Appendix C, shall establish, issue, and maintain, at such offices as we may hereafter designate, a nontransferable interchangeable scrip coupon ticket in the denomination of \$90, which shall be sold at a reduction of 20 per cent from the face value of the ticket. We further find that the rates resulting from that reduction will be just and reasonable for this class of travel."

VII.

Thereafter, on March 6, 1923, the commission issued a supplemental report, with appendix, and order, which are printed in full, marked Exhibit D, and made a part hereof.

VIII.

The said order of March 6, 1923, requires each steam railroad carrier having operating revenues, whether derived from freight, passenger, or other traffic, of \$1,000,000 per annum, or in excess thereof, to issue at all principal stations on its lines a ticket containing 1,800 coupons each having a face value of 5 cents, receivable for transportation at the value of 5 cents per coupon, or \$90 for the entire ticket by each Class I carrier in each and every passenger-carrying train operated by it, but not receivable for excess fares, commutation fares, Pullman surcharge, or excursion fares. Each Class I carrier is required to issue and sell this ticket, although no part of the transportation provided for by the ticket may be conducted by the issuing carrier, and each Class I carrier is required to honor the ticket for transportation at its face value, although the ticket has not been sold by it. The ticket is to be sold for \$72, a discount of \$18, or 20 per cent from the face value of the coupons contained therein. The ticket is to bear the photograph and signature of the purchaser and is to be good for transportation for a period of one year from the date of issuance. If the coupons are not entirely used within the year the remaining coupons are redeemable by the issuing carrier on the basis of charging the full standard fare or fares for the coupons used and refunding the difference, if any, between such standard fare or fares and the price of \$72, paid for the ticket.

IX.

Prior to the promulgation of the aforesaid order of March 6, 1923 the commission in a proceeding pending before it, known as In-

creased Rates, 1920, and in pursuance of the duties imposed upon it by section 15a of the interstate commerce act requiring it to initiate and establish rates and fares which would enable the carriers in such groups as the commission might designate to earn a fair return on the aggregate value of their railway property held for and
 11 used in the service of transportation, had established as the just and reasonable rate for the transportation of passengers over the lines of your petitioners and other carriers the rate of 3.6 cents per mile, which rate of fare accordingly became the established just and reasonable rate for this service.

Thereafter, in Reduced Rates, 1922, the commission reaffirmed this finding so that the established just and reasonable rate of your petitioners and other carriers to which said order of March 6, 1923, is addressed, in effect immediately prior to the issuance of said order of March 6, 1923, was 3.6 cents per mile, and this just and reasonable rate of fare has continued at this figure of 3.6 cents ever since the effective date of the decision of the commission in Increased Rates, 1920, and still continues in effect as the established just and reasonable rate.

The aforesaid order of the commission of March 6, 1923, which requires your petitioners and other carriers to issue scrip coupon tickets at a reduction of 20 per cent below the face value thereof, operates to require your petitioners and other carriers to transport over their lines persons who purchase such scrip coupon tickets at a rate per mile of 2.88 cents irrespective of the commission's finding as to the just and reasonable rate of fare for the transportation of passengers over the lines of railroad of your petitioners and other carriers.

X.

The aforesaid order of the commission of March 6, 1923, is unlawful and void in that it is not supported by the findings of fact made by the commission in its report and supplemental report. The
 12 commission found that there will be large additional expenses in selling and accounting and in the issuance and administration of scrip coupon tickets, thereby increasing the cost of transportation of holders of such tickets as compared with holders of standard fare tickets. The commission further found that it was wholly speculative whether there would be any substantial increase in the volume of business resulting from the issuance of such tickets at reduced fares to compensate the carriers for the large reduction in net railway operating income caused by the sale of such tickets. The additional expense of selling the aforesaid tickets and accounting involved in properly distributing the revenue earned thereon and in properly protecting the nontransferable character of the ticket will amount annually to a large sum of money, estimated by the carriers at the hearing before the commission at approximately \$1,600,000 per annum, which estimate was not dissented from by

the commission. The commission further found that the operating ratio of passenger traffic during the year 1921 was 85.24 per cent and on freight traffic 81.75 per cent. The commission further found that the return to Class I carriers, including large terminal and switching companies, to which class of carriers the aforesaid order of March 6, 1923, is limited, was for seven months ended July 31, 1922, for the Eastern group 4.76, for the Southern group 5.04 per cent, for the Western and Mountain-Pacific groups 3.70 per cent, and for the United States as a whole 4.36 per cent on the valuation established by the commission in Increased Rates, 1920, and reaffirmed in Reduced Rates, 1922.

None of the findings of fact made by the commission supports the formal finding and conclusion that, even for the experimental period of at least one year referred to in the report of the commission, a reduction of 20 per cent to purchasers of scrip coupon tickets would result in just and reasonable passenger fares, and most, if not all, of said findings strongly negative such conclusion.

XI.

The aforesaid order of the commission of March 6, 1923, is unlawful and void in that it requires the carriers to perform services at rates which are noncompensatory. The commission as stated above found that for the year 1921 the passenger operating ratio of the Class I roads was 85.24. If the revenue of the roads on any part of their passenger business should be reduced by 20 per cent, the result would be that on that part of such business they would receive only 80 per cent of the gross revenue which they received thereon in 1921. As stated above, the commission has found that there would be large additional expenses involved in business conducted in connection with scrip coupon tickets on account of the selling, accounting for, and safeguarding thereof. Passengers using such tickets will travel on the same trains and between the same stations and will receive the same service in every respect as passengers using standard tickets. The cost of service for these passengers will therefore be greater than that for other passengers to the extent that it is increased by the additional cost involved in the administration of these tickets.

The commission has further found, as stated above, that there is no evidence to show that travel will be sufficiently stimulated by the sale of these tickets to decrease the cost of service to any substantial extent. The result will be that passengers using these tickets will cost the railroads more than other passengers and will pay 20 per cent less. It is apparent, therefore, that on the basis of a passenger operating ratio of 85 or more, or even 80, the service rendered to holders of such tickets will be rendered at an actual out-of-pocket loss to the railroads. The aforesaid order is therefore unlawful and void in that it deprives the railroads of their property without due process of law and takes their property for

public use without just compensation in violation of the fifth amendment to the Constitution.

XII.

The aforesaid order of the commission of March 6, 1923, is unlawful and void in violation of section 2 of the interstate commerce act in that it provides for a special rate or rebate whereby the carrier is to charge, demand, collect, and receive from one person a less and different compensation for a service rendered or to be rendered in the transportation of passengers than it charges, demands, collects, and receives from other persons for doing for them a like and contemporaneous service in the transportation of passengers under substantially similar circumstances and conditions. On the facts as found by the commission the physical conditions of transportation of the holder of a scrip coupon ticket on the ordinary interstate trains are precisely the same as the physical conditions of transportation of a person holding a standard fare ticket on the same train, except that where the scrip coupon ticket is tendered for transportation on the train more time and trouble devolves upon the conductor or ticket collector in receiving and accounting for such transportation than devolves upon him in connection with the receipt and accounting for passengers holding the standard fare ticket.

XIII.

The aforesaid order of the commission of March 6, 1923, is unlawful and void in that it requires the carriers to violate section 3 of the interstate commerce act which makes it unlawful for any common carrier subject to the act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality or to any particular description of traffic. On the facts as found by the commission, to transport the holder of a standard fare ticket on the ordinary trains at one rate of fare while transporting the holder of a scrip coupon ticket on the same or similar trains at a rate of fare 20 per cent lower is to create an undue preference in favor of the holder of such scrip coupon ticket.

XIV.

The aforesaid order of the commission of March 6, 1923, is unlawful and void in that the commission based its said order on the mistaken view that the amendment to section 22 required that interchangeable mileage books or scrip coupon tickets provided for should be issued at a reduction in the rate regardless of the evidence which might be adduced at the hearing. That the commission so construed the act of Congress appears from the following quotation from the report of the commission:

16 "The spirit and the apparent theory of the law is that carriers shall be required to sell such ticket at something less

than the standard fare, which would be just and reasonable because it would be sold in such quantities as to stimulate travel, and thereby increase net revenue or at least offset any loss in revenue that might result from the reduction, in which event carriers would render greater service to the public."

In making the formal finding that a fare of 20 per cent less than the standard fare would be just and reasonable for the holders of scrip coupon tickets, the commission disregarded the findings of fact made by it and adopted an erroneous construction of the amendment to section 22 of the interstate commerce act and the order issued by it on March 6, 1923, is therefore unlawful and void.

XV.

If, however, the commission correctly construed the aforesaid amendment to section 22 as requiring the issuance of scrip coupon tickets at reduced fares, said amendment is unconstitutional and void in that it is not a proper regulation of interstate commerce and is therefore in violation of Article I, section 8, of the Constitution of the United States, and is in substance an arbitrary discrimination which takes property of the carriers without just compensation and without due process of law in violation of the fifth amendment to the Constitution of the United States. If the aforesaid order of March 6, 1923, is authorized by the amendment to section 22, the result is that the amendment and the aforesaid order require the

17 carriers to discriminate in favor of such persons as contemplate 2,500 miles of travel in one year and are in a position to pay \$72 in advance for such transportation. These persons would secure the same service on the same trains and with the same privileges as the large majority of the traveling public who do not contemplate traveling 2,500 miles in one year or are not in a position to advance \$72 for such transportation. Such a discrimination, if required by the amendment to section 22, is beyond the power of Congress under the provisions of Article I, section 8, of the Constitution.

XVI.

The aforesaid order of the commission of March 6, 1923, is unlawful and void because, as appears from the opinion and report of the commission, the petitioners are required without regard to the justness and reasonableness of the fares and without regard to the consideration of a fair return on the value of their property held for and used in the service of transportation, to try for a period of at least one year an experiment for the purpose of determining whether or not the reduction in fare prescribed by the commission would be reasonable. The proposed experiment is arbitrary and unreasonable for the reason that it can determine nothing except the number of persons in the United States who travel 2,500 miles per annum and have \$72 to pay for such travel in advance. It can not determine

whether such persons would or would not have traveled to this extent if the scrip coupon ticket at the reduced fare had not been available. The order is arbitrary and was made without observance of due process of law and in violation of the fifth amendment to the Constitution.

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XVII.

The aforesaid order of the commission of March 6, 1923, is unlawful and void in violation of section 15a of the interstate commerce act, which requires the commission to initiate, modify, establish, and adjust rates so that the carriers as a whole or in each of such rate groups as the commission may from time to time prescribe, will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way and structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation.

Pursuant to section 15a the commission in Increased Rates, 1920, divided the railroads of the United States into four groups, the Eastern, the Southern, the Western, and the Mountain-Pacific, fixed the tentative valuation of the Eastern group at \$8,800,000,000, and in Reduced Rates, 1922, the rate of return at 5.75 per cent, and reaffirmed the valuation previously established, plus the net cost of additions and betterments made the carriers since the time of fixing of said valuation.

Under the rates and fares prescribed by the commission and in effect at the time the aforesaid investigation was conducted and at the time the aforesaid order of March 6, 1923, was issued, the carriers in the Eastern group were not earning 5.75 per cent on said valuation and were, in fact, as petitioners are informed and believe and therefore allege, earning approximately 4 per cent on said valuation. The

findings of the commission contained in the aforesaid report show that for the seven months ended July 31, 1922, the Class I carriers, including large terminal and switching companies in the Eastern group, received net railway operating income of 4.76 per cent.

At the hearing in the aforesaid proceedings the carriers of the United States estimated that the scrip coupon ticket of the character ordered by the commission would reduce their net railway operating income on the existing volume of business approximately \$60,000,000 per annum, or approximately 6 per cent of their total passenger revenue. This estimate was not questioned by the commission in its findings. The passenger revenues of the carriers of the Eastern group for the year ended December 31, 1922, were approximately \$515,000,000, of which 6 per cent is upwards of \$30,000,000, representing a loss of that amount in net railway operating income to the carriers of the Eastern group of which your petitioners are members, assuming no substantial increase in the volume of busi-

ness. The passenger revenues of your petitioners for the year ended December 31, 1922, were approximately \$480,000,000, of which 6 per cent is approximately \$28,800,000, representing a loss of that amount in net railway operating income to the petitioners assuming no substantial increase in the volume of business.

The commission, in requiring such large reductions in net railway operating income at a time when the carriers were not and are not earning the rate of return prescribed on the valuation established by the commission, disregarded the provisions of the interstate commerce act requiring it to establish such rates that the carriers

20 of the Eastern group would earn an aggregate annual net railway operating income equal as nearly as may be to 5.75 per cent upon the aforesaid aggregate value of the railway property of such carriers held for and used in the service of transportation, and acted beyond the scope of power delegated to it by said act.

XVIII.

The aforesaid order of the commission of March 6, 1923, is unlawful and void in that it requires the carriers to violate section 1 of the interstate commerce act, which requires the carriers to establish and charge just and reasonable fares and the aforesaid order of March 6, 1923, is in violation of section 22, which requires the commission to prescribe just and reasonable fares in connection with the issuance and sale of scrip coupon tickets. By its decision in Increased Rates, 1920, the commission established the basic rate of fare of 3.6 cents per mile as the just and reasonable basic rate of fare generally throughout the United States. Subsequently it made many orders involving intrastate fares in numerous States requiring such fares to be established on the basis of 3.6 cents per mile in order that interstate commerce might not be unduly burdened or subjected to unjust discrimination, which orders are still in effect. Still later in Reduced Rates, 1922, the commission reaffirmed its previous decision as to the reasonableness of the basic fare of 3.6 cents per mile. In the opinion heretofore referred to and made a part hereof, the commission did not question the justness and reasonableness of the basic fare of 3.6 cents per mile. The actual cost of transportation of passengers using such tickets is no less than the cost of transportation of passengers using such tickets at the standard

21 rate, and the cost of issuing, safeguarding, and accounting for such scrip coupon tickets is greater than the cost incident to the use of standard form of ticket. There is and will be no saving to the petitioners in the use of such scrip coupon tickets on any principle of wholesale rates because the service performed is identical and the cost thereof is greater to the carriers. On the facts as found by the commission a just and reasonable fare for the holder of a scrip coupon ticket good for ordinary transportation on all trains throughout the United States cannot possibly be less than a just and reason-

able fare for the transportation of any other passenger receiving the same service.

XIX.

The aforesaid order of the commission of March 6, 1923, is unlawful and void in that it interferes with the liberty of contract of the carriers and takes their property without due process of law and without just compensation in violation of the fifth amendment to the Constitution in that it requires the establishment of relation of principal and agent and creditor and debtor, between carriers without their consent and requires one carrier to furnish transportation upon the credit of another carrier, and may in cases of insolvency of the carrier issuing the scrip coupon tickets subject the carriers required to honor the scrip coupon tickets so issued to substantial loss. It also requires the carriers issuing scrip coupon tickets over whose lines no part of the transportation is used to perform substantial accounting and other services without compensation therefor in violation of the fifth amendment to the Constitution.

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XX.

The aforesaid order of the commission of March 6, 1923, is unlawful and void because it requires a carrier to accept scrip coupon tickets issued by itself or another carrier in payment for a single journey irrespective of the length of that journey and irrespective of the fact that the holder of the scrip coupon ticket may use the scrip coupon ticket for no other journey over the line of the carrier in question. The order is therefore arbitrary and void in violation of the fifth amendment to the Constitution of the United States, since, without any reason or justification whatever, it requires the carrier to transport the said passenger on the said journey for less than the just and reasonable rate of fare as determined by the Interstate Commerce Commission in the proceedings hereinabove referred to.

XXI.

Paragraph 2 of section 22 of the interstate commerce act also provides in part that "the commission may in its discretion exempt from the provisions of this amendatory act either in whole or in part any carrier where the particular circumstances shown to the commission shall justify such exemption to be made."

No rule or standard to guide the discretion of the commission in the exercise of this power is prescribed. Legislative power is delegated to the commission in violation of Article I, section 1, of the Constitution of the United States.

The commission exercised the legislative power delegated
23 to it to exempt carriers in an arbitrary manner. It called
for applications of exemption to be filed on or before September 15, 1922. According to its report more than 400 carriers

filed applications for exemption. There are approximately 1,000 carriers by railroad in the United States engaged in interstate commerce. At least several hundred of these carriers did not file applications for exemption. The commission states that but few of the carriers filing exemptions appeared for the purpose of introducing evidence. The commission proceeded upon this record to state in form that all carriers other than steam railroad carriers of Class I should be and were exempt from the application of paragraph 2 of section 22 of the interstate commerce act. The commission states further that if any carrier exempted should hereafter desire "to establish and maintain non-transferable interchangeable scrip coupon tickets under the conditions hereinbefore prescribed, our finding of exemption will not preclude them from doing so." Thus the commission after going through the formality of exempting many carriers in the absence of evidence, proceeded to leave to each of those carriers to determine for itself whether it would become subject to paragraph 2 of section 22 of the interstate commerce act. The commission delegated to each and several hundred carriers to determine the question whether they should or should not become subject to the law. This action was arbitrary and without due process of law in violation of the fifth amendment to the Constitution and was a delegation by the commission to the carriers of the legislative power which had been delegated by Congress to the commission.

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XXII.

The aforesaid order of the commission of March 6, 1923, is unlawful and void because it is not restricted to interstate commerce, but, on the contrary, applies to and includes transportation of passengers wholly within one State.

XXIII.

If as alleged by petitioners the order of the commission of March 6, 1923, is unlawfull and void, compliance with its terms and provisions will cause each of them irreparable injury for which they will have no adequate remedy at law. The sale of scrip coupon tickets will, as they are informed and believe, and therefore allege, reduce the passenger revenues of each of them approximately 6 per cent, a reduction for all of your petitioners of approximately \$28,800,000. If the scrip coupon tickets are sold and honored at the reduced rate prescribed and if the said order of March 6, 1923, should subsequently be held to be invalid and if it should be held that the petitioners cannot recover from the purchasers of said tickets the difference between the reduced fares and the standard fares they will be subjected to irreparable injury and to loss to the extent of many millions of dollars; and if it should be held that the petitioners could recover the difference between the reduced fares and the standard fares the petitioners would be obligated to bring at

least several hundred thousand suits in all jurisdictions throughout the United States and at great expense and with the probability that in many cases service upon the purchasers of scrip coupon tickets could not be obtained and that in many cases judgments obtained in favor of your petitioners would never be satisfied. Your petitioners allege that in the event of the sale of the scrip coupon tickets at reduced fares and a subsequent decision that the said order of the commission of March 6, 1923, is unlawful and void, your petitioners will be without adequate remedy at law to recover the enormous losses which they will sustain by compliance with said order.

XXIV.

The aforesaid order of the commission of *the commission of* March 6, 1923 (Exhibit D), is null and void and of no legal effect for the reasons set forth in paragraphs IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, and XXIII of this petition.

In consideration whereof and for as much as your petitioners are remediless in the premises and by the strict rules of the common law and to the end that they may obtain the relief to which they are entitled your petitioners now pray:

First. A permanent injunction decreeing that said order of the commission of March 6, 1923, be set aside, annulled, suspended, and its enforcement, operation, and execution forever enjoined.

Second. An interlocutory injunction suspending and restraining the enforcement, operation, and execution of said order of March 6, 1923, in whole and in part and setting the same aside.

Third. Such other and further relief as to justice and equity may appertain.

CHARLES F. CHOATE, JR.,
Solicitor for Petitioners.

26 STATE OF NEW YORK,
County of New York, ss.:

Alfred H. Smith, being duly sworn, says that he is the president of the New York Central Railroad Company, one of the petitioners in the above-entitled cause; that he has read the foregoing petition and knows the contents thereof; that said petition is true of his own knowledge except as to those matters alleged on information and belief; and that as to those matters he believes it to be true.

A. H. SMITH.

Subscribed and sworn to before me this 29th day of March, 1923.
[NOTARIAL SEAL.]

J. M. O'MAHONEY.

Notary Public.

Bronx County, clerk's No. 11, register's No. 43; certificate filed in New York County; clerk's No. 50, register's No. 4059. My commission expires March 30, 1924.

Exhibit A to petition.

Section 22, interstate commerce act (as amended by acts of March 2, 1889, February 8, 1895, and August 18, 1922).

SECTION 22. (1) That nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this Act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this Act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies: Provided, That no pending litigation shall in any way be affected by this Act: Provided further, That nothing in this Act shall prevent the issuance of joint interchangeable five thousand-mile tickets with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier subject to the provisions of this Act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section six of this Act; and all the provisions of said section six relating to joint rates, fares, and charges, shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section six. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater

or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of section ten of this Act shall apply to any violation of the requirements of this proviso.

29 (2) The Commission is directed to require, after notice and hearing, each carrier by rail, subject to this Act, to issue at such offices as may be prescribed by the commission interchangeable mileage or scrip coupon tickets at just and reasonable rates, good for passenger carriage upon the passenger trains of all carriers by rail subject to this Act. The commission may in its discretion exempt from the provisions of this amendatory Act either in whole or in part any carrier where the particular circumstances shown to the commission shall justify such exemption to be made. Such tickets may be required to be issued in such denominations as the commission may prescribe. Before making any order requiring the issuance of any such tickets the commission shall make and publish such reasonable rules and regulations for their issuance and use as in its judgment the public interest demands; and especially it shall prescribe whether such tickets are transferable or non-transferable, and if the latter, what identification may be required; and especially, also to what baggage privileges the lawful holders of such tickets are entitled.

(3) Any carrier which, through the act of any agent or employee, wilfully refuses to issue or accept any such ticket demanded or presented under the lawful requirements of this Act, or wilfully refuses to conform to the rules and regulations lawfully made and published by the commission hereunder, or any person who shall wilfully offer for sale or carriage any such ticket contrary to the said rules and regulations shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not to exceed \$1,000.

30

Exhibit B to petition.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 23rd day of August, A. D., 1922.

No. 14104.

Interchangeable mileage ticket investigation.

Whereas, an act (Public No. 281, 67th Congress) entitled "An act to amend section 22 of the interstate commerce act, as amended," approved August 18, 1922, reads:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22 of the Interstate Commerce Act, as amended, is amended by insert-

ing '(1)' after the section number at the beginning of such section and by adding to the section two new paragraphs, to read as follows:

"(2) The Commission is directed to require, after notice and hearing, each carrier by rail, subject to this Act, to issue at such offices as may be prescribed by the commission interchangeable mileage or scrip coupon tickets at just and reasonable rates, good for passenger carriage upon the passenger trains of all carriers by rail subject to this Act. The commission may in its discretion exempt from the provisions of this amendatory Act either in whole

or in part any carrier where the particular circumstances shown to the commission shall justify such exemption to be made. Such tickets may be required to be issued in such denominations as the commission may prescribe. Before making any order requiring the issuance of any such tickets the commission shall make and publish such reasonable rules and regulations for their issuance and use as in its judgment the public interest demands; and especially it shall prescribe whether such tickets are transferable or non-transferable, and if the latter, what identification may be required; and especially, also to what baggage privileges the lawful holders of such tickets are entitled.

"(3) Any carrier which, through the act of any agent or employee, wilfully refuses to issue or accept any such ticket demanded or presented under the lawful requirements of this Act, or wilfully refuses to conform to the rules and regulations lawfully made and published by the commission hereunder, or any person who shall wilfully offer for sale or carriage any such ticket contrary to the said rules and regulations shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not to exceed \$1,000."

It is ordered, That a proceeding of investigation be, and it is hereby, instituted into and concerning the matters and things which the commission is directed by said act to investigate, with a view to the issuance of such order or orders or other requirements as may be proper and necessary to carry said act into effect.

32 It is further ordered, That this proceeding be, and it is hereby, assigned for hearing at the office of the commission at Washington, D. C., on Tuesday, September 26, 1922, at 10 a. m., before Commissioner B. H. Meyer.

It is further ordered, That unless good cause later appears to justify a different arrangement, testimony shall be received upon the following and related questions in the order designated:

1. Shall both interchangeable mileage and scrip coupon tickets be issued and sold?

2. What rate or rates shall be established as just and reasonable for each or either form of ticket? What conditions, if any, should be attached to the issuance and sale of such tickets by reason of the existence of different levels of passenger rates in different sections of the country?

3. In what denominations shall the ticket or tickets be issued?

4. In general, at what offices of carriers shall the tickets to be prescribed be available to the public?

5. What rules and regulations for the issuance and use of these tickets shall be required?

6. Shall the tickets be transferable or nontransferable? If non-transferable, what identification may be required?

7. To what baggage privileges shall the lawful holders of such tickets be entitled?

Carriers' proposals will be heard first, to be followed by cross-examination and then by the direct testimony of commercial and other organizations and individuals and cross-examination thereon.

33 It is further ordered, That each carrier seeking exemption from the provisions of this amendatory act must file with the commission a written statement to that effect on or before September 15, 1922, embracing briefly the grounds for such request for exemption; and testimony in support of such requests will be received at the close of that offered on the questions listed above.

It is further ordered, That all carriers by rail subject to the interstate commerce act be, and they are hereby, made respondents in this proceeding; and that copies of this order be served upon all such respondents, upon the governor and upon the railroad or other regulatory commission of each State, and upon such other individuals and organizations as may appear to have an interest in this investigation.

By the commission:

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

34 *Exhibit C to petition.*

Interstate Commerce Commission.

No. 14104.

Interchangeable mileage ticket investigation.

Submitted November 15, 1922. Decided January 26, 1923.

1. Carriers by rail subject to the interstate commerce act, enumerated in Appendix C, required to issue nontransferable interchangeable scrip coupon ticket at just and reasonable rates prescribed herein.

2. Other carriers by rail exempted from provisions of the amendatory act.

Henry Wolf Bikle, John C. Bills, W. S. Bronson, Clyde Brown, N. S. Brown, George F. Brownell, E. G. Buckland, R. V. Fletcher, H. A. Taylor, and Francis I. Gowen for eastern carriers.

Frank W. Gwathmey, Henry Thurtell, William A. Northcutt, and Charles J. Rixey for southern carriers.

Wallace T. Hughes for western, southwestern, and transcontinental carriers.

C. M. Burt, C. L. Hunter, W. L. Pratt, T. Thompson, Eben E. MacLeod, E. L. Bevington, J. E. Hannegan, and W. H. Howard for various passenger associations.

Ben B. Cain for various members of American Short Line Association.

J. H. Crall for Central Electric Traffic Association.

35 Charles L. Henry for American Electric Railway Association.

A. H. Elder, W. C. Hope, James W. Carmalt, L. Agnew Meyers, J. W. Redmond, C. A. Cairns, W. H. T. Loyall, Charles D. Drayton, L. M. Allen, G. F. Thomas, Henry J. Hart, E. H. Scott, E. E. Williamson, Charles H. Blatchford, John Y. Calahan, Edward E. Gann, F. A. Wadleigh, C. P. Ryan, W. L. Morris, F. E. Batturs, J. D. Rahner, W. A. Russell, W. H. Tayloe, W. A. Beckler, E. M. Womack, H. H. Rauth, N. V. Hutchinson, J. A. Higgins, W. D. Cook, Frederick T. Grant, F. C. Coley, R. H. Wallace, W. W. Richardson, W. W. Pringle, W. F. Griffiths, M. J. Powers, E. D. Osterhout, George H. Parker, G. F. Snyder, C. L. Stone, W. J. Cannon, Dwight V. Jones, Richard A. Ford, P. S. Eustis, A. L. Craig, and William J. Craig for various carriers.

John E. Benton for regulating authorities of Arizona, Iowa, Nevada, New Mexico, North Carolina, Oklahoma, and Washington.

D. L. Kelley and Raymond C. Dillman for Railroad Commissioners of South Dakota.

Samuel Blumberg and Hoke Smith for National Council of Traveling Salesmen's Association.

James C. Lincoln, Hugh A. Holmes, Charles E. Cotterill, Fred L. Goddard, A. E. Beck, C. L. Hileary, John F. Shea, J. H. Tedrow, George P. Wilson, Thomas A. Delaney, Breed, Abbott & Morgan, Lamfrom & Tighe, and David K. Clink for various civic, commercial travelers', and hotel associations.

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REPORT OF THE COMMISSION.

MEYER, Chairman:

This proceeding was instituted upon our own motion pursuant to the amendment of section 22 of the interstate commerce act approved August 18, 1922, which provides that—

“(2) The Commission is directed to require, after notice and hearing, each carrier by rail, subject to this Act, to issue at such offices as may be prescribed by the Commission interchangeable mileage or scrip coupon tickets at just and reasonable rates, good for passenger carriage upon the passenger trains of all carriers by rail subject to this Act. The Commission may in its discretion exempt from the provisions of this amendatory act either in whole or in part any carrier where the particular circumstances shown to the

Commission shall justify such exemption to be made. Such tickets may be required to be issued in such denominations as the Commission may prescribe. Before making any order requiring the issuance of any such tickets the Commission shall make and publish such reasonable rules and regulations for their issuance and use as in its judgment the public interest demands and especially it shall prescribe whether such tickets are transferable or non-transferable, and if the latter, what identification may be required; and especially, also to what baggage privileges the lawful holders of such tickets are entitled.

"(3) Any carrier which, through the act of any agent or employee, wilfully refuses to issue or accept any such ticket demanded or presented under the lawful requirements of this Act, or wilfully refuses to conform to the rules and regulations lawfully made and published by the Commission hereunder, or any person who shall wilfully offer for sale or carriage any such ticket contrary to the said rules and regulations shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not to exceed \$1,000."

Our notice of hearing suggested the following lines of evidence: (1) Shall both interchangeable mileage and scrip-coupon tickets be issued and sold? (2) What rate or rates shall be established as just and reasonable for each or either form of ticket? (3) What conditions, if any, should be attached to the issuance and sale of such tickets by reason of the existence of different levels of passenger rates in different sections of the country? (4) In what denominations shall the ticket or tickets be issued? (5) In general, at what offices of carriers shall the tickets to be prescribed be available to the public? (6) What rules and regulations for the issuance and use of these tickets shall be required? (7) Shall the tickets be transferable or nontransferable? (8) If nontransferable, what identification may be required? (9) To what baggage privileges shall the lawful holders of such tickets be entitled?

Our order of investigation also provided that each carrier seeking exemption from the provisions of this act should file with us on or before a day fixed, a written statement to that effect, briefly indicating the grounds for the request. Many applications were filed and evidence in support of some of them was received at the hearing. No opposition was expressed to any application for exemption.

At the opening of the hearing respondents reserved such rights as they might have to question the constitutionality of the act, or of any action we might take thereunder. This is discussed to some extent on briefs. We have repeatedly said that it is our duty to apply a statute as we find it, and that it is for the courts to determine the validity of the statute where that question arises.

The amendatory act affirmatively directs us to require, after notice and hearing, "each carrier by rail subject to this act" to

38 issue at such offices as may be prescribed by us "interchangeable mileage or scrip coupon tickets" at "just and reasonable rates, good for passenger carriage upon the passenger trains of all carriers by rail subject to this act." We may in our discretion exempt from its provisions, either in whole or in part, any carrier where the particular circumstances may justify such exemption. The act is mandatory in that it directs us, after notice and hearing, to require each carrier by rail subject to the act to issue "interchangeable mileage or scrip-coupon tickets." It is discretionary in that we may prescribe either an interchangeable mileage ticket or a scrip-coupon ticket. It is also left to our judgment to determine after notice and hearing the "just and reasonable rates" at which the form of ticket prescribed shall be issued.

All parties who appeared at the hearing are in substantial agreement with respect to most of the conditions, rules, and regulations under which the tickets shall be issued. Practically all expressed preference for an interchangeable scrip-coupon ticket over a mileage ticket. The scrip ticket contemplates the issuance of a book of coupons which for passenger travel are equivalent to currency, the coupons being detached by the ticket agent or conductor to cover the transportation charge at the time the service is performed. The mileage ticket also contains coupons which are detached to cover the mileage traveled. Every convenience or advantage inherent in a mileage ticket appears to be more completely and satisfactorily met by a scrip coupon ticket, both from the standpoint of the passenger and of the carrier. Certain practical difficulties which would arise from the use of an interchangeable mileage ticket will not arise from the use of an interchangeable scrip-coupon ticket.

39 The parties do not agree upon the rate at which the ticket should be sold. The commercial travelers ask that tickets be sold in the denomination of \$100 at rates 33½ per cent less than the standard fares. Respondents oppose any reduction from the standard fares. The amount of the rate is the most important question before us in this proceeding.

Passenger statistics.

The operating ratios of Class I steam roads for 1920 and 1921 by districts and for the United States indicate that passenger service is not producing an undue proportion of revenue. In 1921 the operating ratio for the United States for freight service was 81.79 and for passenger service 85.24.

The net railway operating income for the seven months ended July 31, 1922, of Class I carriers, including large switching and terminal companies, yielded returns of 4.76 per cent in the eastern group, 5.04 per cent in the southern group, 3.70 per cent in the western and mountain-Pacific groups, and 4.36 per cent in the United States as a whole, on the valuation used by us in Increased Rates, 1920, 58 I. C. C., 220.

The revenue passenger-miles, passengers per train, and passengers per car for each year, 1916 to 1921, and for the first six months of 1921 and 1922 are as follows:

40	Calendar year.	Passengers per train.	Passengers per car.	Revenue passenger- miles.
	1916.....	57	16	34,586,000,000
	1917.....	65	17	39,477,000,000
	1918.....	76	20	42,677,000,000
	1919.....	82	21	46,358,000,000
	1920.....	80	20	46,849,000,000
	1921.....	67	16	37,329,000,000
	1921 (first six months).....	66	16	18,382,000,000
	1922 (first six months).....	60	15	16,487,000,000

Classification.

Carriers have long recognized different classes of travel for each of which different rates of fare have been exacted; such as, the standard, the commutation, the convention, the excursion, and the summer and winter tourist.

Prior to Federal control the standard fare for interstate travel was in the greater part of the country approximately 2.5 cents per mile. For intrastate travel it was 2 cents per mile in many States. In some parts of the country, more particularly in the southern and western districts, the standard fare, both State and interstate, was higher than 2.5 cents.

In June, 1918, the director general established the minimum standard fare of 3 cents per mile, both State and interstate, for application by railroads under Federal control. In August, 1920, the standard fare was increased 20 per cent or to 3.6 cents per mile.

Commutation fares entitle the purchaser to daily transportation between designated points for fixed periods of time and are substantially lower per mile of travel than the standard fares.

41 In commutation fares both distance and time are determining factors. The convention fare is designed to take care of the movement of passengers within a limited time for a special purpose. Frequently carriers require the persons interested in the convention to guarantee a minimum number of passengers for carriage at a given time as a condition precedent to the granting of the special fare. The excursion fare has many of the characteristics of the convention fare in that it usually represents an intensified movement of passengers between particular points on particular days and within a defined period of time. The summer and winter tourist fares are as a rule on a higher level than the convention or excursion fares and apply between summer and winter resorts and other points. The convention, excursion, and tourist fares are admittedly established by carriers for the purpose of encouraging travel that might not otherwise occur. This amendment contemplates

that carriers shall be required to recognize an additional class of passenger travel and to provide a special form of ticket which shall be issued at just and reasonable rates fixed by us to cover such travel. The greatest users of this class of travel, if available at rates lower than the standard rates, will undoubtedly be commercial salesmen, business men, professional men, and others who make frequent trips.

History of mileage ticket.

The evidence indicates that mileage tickets were primarily issued, not for the purpose of stimulating passenger travel but as a means of inducing shippers to route freight over particular railroads. They were issued at fares lower than the standard fares for the convenience of and as a concession to shippers at a time when concessions were common. They were not infrequently given to shippers free. At one time it was customary to issue annual passes to large shippers who employed traveling men. Passes were issued with the idea that they would be used by the principal officers of the shipping concern. Mileage tickets were issued chiefly to take care of the traveling men employed by shippers. Moreover, by the use of mileage tickets carriers were able to extend favors to shippers commensurate with their respective freight shipments. That could not be done with term passes, as no record was kept of their use.

It later became the custom to use mileage tickets also in exchange for advertising, which continued until it was declared unlawful as to interstate commerce. The interstate commerce act and its amendments made it necessary for carriers to revise their practices from time to time. Carriers say that although most of them were convinced long before Federal control that the mileage book should be abolished, it was difficult for them to do so because of competition and because the custom had become deeply rooted by the sanction of time. They stress the fact that the demand of commercial travelers for mileage tickets at rates lower than the standard fares was just as insistent when the standard fare was 2.5 and 2 cents per mile as it is to-day. For some time prior to Federal control efforts were made by carriers to restrict the use of mileage tickets, so that by the time they were taken over by the Government the use of the mileage ticket had become so circumscribed in central passenger association territory, because confined to interstate passage, as to make the sale thereof negligible. Prior to October, 1917, it had been the custom for carriers in southeastern territory to issue a mileage ticket or book good for use by any member of the firm or corporation to whom issued. At that time this form of ticket was substituted for nontransferable tickets which contained 2,000 coupons and were sold at \$45.

On June 10, 1918, the director general abolished all mileage books and established in lieu thereof for the convenience of travelers an interchangeable scrip coupon ticket of denominations of \$15, \$30, and \$90, sold at the standard fare, and good on all passenger trains

operated by railroads under Federal control. At the expiration of Federal control the carriers continued the use of this form of ticket in the same denominations. This ticket, which is still in use, is interchangeable among practically all carriers by rail except electric and short-line carriers. The revenue from its sale is estimated to represent about 1 per cent of the total passenger revenue. It was originally established by the director general and was perpetuated by the carriers after Federal control, partly to relieve the congestion at ticket offices in the larger cities and partly to take the place of the mileage book and thus afford the public the convenience of boarding trains for short trips without the necessity of purchasing a ticket at the ticket office for each trip. The commercial travelers insist that the discontinuance of mileage books by the director general was in part to discourage unnecessary travel and to divert some travel from the steam roads to other forms of transportation. To what extent the director general was influenced by a desire to increase passenger revenue is not disclosed.

Immediately prior to the time that mileage tickets were abolished by the director general they had been sold at reductions below
 44 the standard fare ranging from 10 to 20 per cent, namely, 10 per cent in New England, 10 per cent in central and trunk-line passenger association territories, 20 per cent in southeastern territory, and 16 $\frac{2}{3}$ per cent in southwestern territory. At an earlier period they had been sold in some parts of the country at reductions of 33 $\frac{1}{3}$ per cent.

The evidence with respect to the extent of the use of mileage tickets prior to Federal control tends to indicate that in some parts of the country and at certain periods not less than 20 per cent of the total passenger revenue was derived from the sale of mileage tickets, and that over some routes between particular points the revenue from mileage tickets exceeded 60 per cent of the total revenue derived from passenger traffic between such points. Carriers have never issued an interchangeable mileage ticket good for use on all railroads in all parts of the country. Mileage tickets were issued good for use over particular lines and were interchangeable as to carriers within defined territories, sometimes including a large number of railroads.

Demand for mileage ticket at reduced fare.

The demand for an interchangeable mileage or scrip coupon ticket comes chiefly from organizations of commercial travelers. That demand is also supported to some extent by shippers who employ commercial travelers and by a national hotel association. These organizations and associations introduced evidence designed to show that we should require respondents to issue an interchangeable scrip coupon ticket in denominations ranging from \$50 to \$150. Some suggest that the tickets should be issued in denominations of \$50,
 45 \$100, and \$150. Commercial travelers organizations generally favor a ticket in the denomination of \$100. All urge that

the tickets should be sold at $33\frac{1}{3}$ per cent less than the standard fare and that they would stimulate travel to such an extent as to offset any decrease of revenue that might result from the reduction in the fare. They say that the stimulus from the use of such a ticket would in all probability result in increased revenue. They also urge that salesmen would by their sales stimulate the movement of freight traffic and thereby augment freight revenue. One of their witnesses stated that an interchangeable ticket purchasable at $33\frac{1}{3}$ per cent below the standard fare would become so common in its use as to represent 25 per cent of the total travel. The commercial travelers attempt to justify their request for a mileage ticket at $33\frac{1}{3}$ per cent less than the standard fare upon the claim that prior to the discontinuance of the mileage ticket, carriers voluntarily sold such tickets at such a discount and that they now sell tourist and summer and winter excursion tickets at discounts as great as that. The evidence indicates that carriers did not generally sell mileage tickets at discounts as great as $33\frac{1}{3}$ per cent, except during early periods when concessions from tariff rates were common, and within restricted territories.

Certain witnesses stated that there was a substantial falling off in the number of commercial salesmen on the road during 1921 and during the first six months of 1922 as compared with 1920. They attribute this to the high passenger fares established as a part of the general increases of August, 1920; and say that many salesmen who operate on a commission basis and many mercantile houses refrained, during those periods, from inaugurating road trips because of the high passenger fares.

46 The record does not support the statement that the falling off in revenue passenger-miles during 1921 and the first six months of 1922 was due chiefly to the high level of passenger fares. This confirms what we said in *Reduced Rates, 1922*, 68 I. C. C., 676, where we pointed out that the decrease in revenue passenger-miles in 1921 was the result of many contributing causes which included business depression, the increased use of motor vehicles, the improvement of highways, and the high level of passenger fares. The passenger fare was undoubtedly a contributing cause, but it is contrary to the evidence to say it was the only or even the chief cause. The removal on January 1, 1922, of the war tax of 8 per cent on passenger fares did not measurably stimulate passenger travel during the succeeding six months.

Carriers admit that a reduction in fares, more substantial than their revenues can stand, might stimulate travel to some extent but urge that there is no ground for the conclusion that such stimulus would be sufficient to offset the loss of revenues which in their judgment would result from such a reduction. They fear that an interchangeable mileage or scrip coupon ticked good for passage on all of the principal carriers, if sold below the standard fare, would in the course of time be used by passengers who would otherwise pay the standard fares; and that even though some additional travel might

be stimulated by the lower fare, the loss of revenue from the passengers who would have traveled in any event at the standard fare would offset any gain in revenue from the stimulated travel. Appendix A reflects carriers' estimate of the use of a nontransferable mileage or scrip book requiring identification by photograph and autograph, time limit one year, at varying reductions in fares, and of the loss of revenue that would result. Appendix B reflects the same information with respect to a mileage or scrip book good for presentation by holder without any requirements as to identification.

The commercial travelers also urge that the interchangeable coupon ticket at the reduction suggested by them is justified on the ground that it involves what is equivalent to the wholesale purchase of transportation. They say that carriers themselves have recognized this wholesale principle in the establishment of carload rates lower than less-than-carload rates and in the establishment of fares for commuters, excursionists, and tourists less than the standard fares, and that it is recognized by public utility corporations in the sale of gas, electricity, and the telephone. In the mercantile world the wholesale principle generally involves the element of resale which is entirely lacking with respect to the interchangeable scrip or mileage ticket. It will be found upon examination that there is no true analogy between the carload rate and the interchangeable scrip ticket. The carload rate involves one shipment, from one consignor to one consignee, in one day, in one car, whereas the scrip or mileage ticket involves the purchase of a book which, generally speaking, is not used for one passage but is used, or at least may be used, for many trips at different times and for varying distances throughout the life of the ticket. Moreover, the transportation of less-than-carload shipments involves greater service and greater cost than does the transportation of carload shipments. There would be some analogy between the scrip or mileage book and the carload rate if after the shipper had paid the carrier the carload rate he had the privilege of delivering the shipments, which make up the carload lot, at different times at different destinations on different railroads throughout the country.

Another ground suggested by commercial travelers in justification of a scrip or mileage ticket at reduced fares is that carriers would receive the benefit of the use of the money paid for the tickets in advance of the use of the transportation. The evidence as to this is inconclusive. It tends to show that no real benefit would inure to carriers from this source. It is the custom of carriers to adjust interline accounts by balances once a month. The statement is made that the average life of the old mileage books was 60 days. As the carrier which sells the ordinary interline ticket now has the use of the money for 30 days, it would appear that if the average life of the ticket can be assumed to be 60 days, that the carrier which receives the money for the sale of the ticket would have the use of that money only 30 days longer than it would have it from the sale of an

ordinary interline ticket. The evidence also tends to show that any benefit that carriers might derive from the advance use of the money would be more than offset by the additional expense to them of accounting and policing the use of the mileage or scrip tickets. They estimate that the additional expense to Class I carriers would be approximately \$1,680,000 per annum.

Carriers urge that a scrip book at reduced rates will result in preference to one class of passengers and in discrimination against another class. They point out that in substance the commercial travelers desire the privilege of purchasing \$100 worth of transportation measured by the standard fare at \$66.67 when sold as an interchangeable scrip book and suggest that if the so-called wholesale principle is to be recognized that any prospective passenger who intends to travel between New York and Chicago or between any points where the fare is as much or greater than \$66.67 should be entitled to the discount of 33½ per cent.

Conclusion.

The amendment to the act pursuant to which this proceeding was instituted does not upon its face indicate upon what basis an interchangeable mileage or scrip ticket should be issued. The spirit and the apparent theory of the law is that carriers shall be required to sell such a ticket at something less than the standard fare, which would be just and reasonable because it would be sold in such quantities as to stimulate travel, and thereby increase net revenue or at least offset any loss in revenue that might result from the reduction, in which event carriers would render greater service to the public. It is a well recognized rule in trade and commerce that, other things being equal, as the price of an article is lowered the sales increase. And the fact that for many years prior to Federal control carriers voluntarily sold mileage books at discounts ranging from 10 to 33½ per cent is not without significance. That commutation and excursion fares create traffic is conceded by carriers. That some additional traffic would be created by a scrip ticket at reduced fares may fairly be assumed, although it is impossible to determine how much. Many unused coupons would not be redeemed while others which remained in the book near the end of the year or season would undoubtedly be used for passenger travel that would not otherwise occur. A scrip ticket at reduced fares could not be justified solely upon the theory that the cost per passenger-mile might thereby be reduced, although it is apparent that anything that will tend to cause a fuller utilization of passenger-train facilities without overcrowding will also tend to reduce the average cost per passenger-mile.

If carriers are to be required to issue a mileage or scrip coupon ticket at a reduced fare it must be mainly upon the assumption that travel will be stimulated thereby. The question whether the mileage or scrip coupon ticket at reduced fare will stimulate travel sufficiently

to increase or to equalize any loss in revenue that might result must remain in the realm of speculation until and unless such a ticket is established and experience recorded. The evidence neither proves the affirmative nor the negative of the question whether the mileage book used in the past stimulated travel and whether reductions in fares increased the number of revenue passenger-miles. The evidence as to the use of the mileage books is too indefinite to be helpful, or to afford a guide in determining for the future the question whether a scrip ticket at a reasonable fare below the standard fare would increase or decrease carriers' revenues. The testimony of merchants, manufacturers, and commercial travelers is to the effect that an interchangeable mileage ticket at reduced fares would result in a greater number of salesmen being put on the road. And, of course, the use of such a ticket would not be restricted to commercial travelers and business men. It would be open to all. In addition to the obvious spirit of the law, the record warrants the view that a coupon ticket at a reasonably reduced fare should be established, at least for an experimental period. In no other way can the apparent purpose of the law be given practical effect.

We find and conclude that on and after March 15, 1923, carriers by rail, respondents herein, enumerated in Appendix C, shall establish, issue, and maintain, at such offices as we may hereafter designate, a nontransferable interchangeable scrip coupon ticket in the denomination of \$90, which shall be sold at a reduction of 20 per cent from the face value of the ticket. We further find that the rates resulting from that reduction will be just and reasonable for this class of travel. This scrip coupon ticket shall be good, within one year from the date of its sale, for carriage of passengers on all passenger trains operated by said respondents, except that in the case of special or extra-fare trains its use will be subject to the payment by the passenger of the special or extra fare. Respondents shall keep a record of the use of the tickets during the first 12-month period which should reflect its effect on passenger revenues, the number of scrip tickets sold, and the gross revenue derived from their sale. Parties other than carriers, primarily interested in this experiment, should likewise record their experience with this ticket in order that the actual results of the experiment may be ascertained to the fullest extent possible. Any party to this proceeding may bring the matter to our attention for further consideration on or about January 1, 1924, with such statements as they choose to make concerning the operation and effect of the scrip tickets.

By request of the parties and for the purpose of affording them an opportunity to confer we will defer action on the rules and regulations which shall govern the issuance of the scrip ticket for 30 days from the service of this report. Before the expiration of that period the parties will be expected to submit to us the result of their efforts to agree upon a set of rules and regulations. Upon receipt of this advice we will enter an appropriate order.

Exemptions.

Under the amendatory act we are authorized to exempt from its provisions "either in whole or in part any carriers where the particular circumstances shown to the commission shall justify such exemption to be made." More than 400 carriers filed applications for exemption prior to the hearing although comparatively few appeared for the purpose of introducing evidence. The applications include a few Class I carriers. But in the main the applications are from Class II and Class III carriers, electric carriers, and switching and terminal carriers. No evidence was introduced in opposition to these applications.

The applications of Class I carriers are based chiefly upon the objection to interchangeable scrip or mileage coupon ticket at any rate below the standard fare. The principal reasons assigned for exemption by the short lines, the electric, and the switching and terminal carriers are that they are engaged chiefly in intrastate commerce, that their passenger traffic is negligible, that they do not honor or sell passenger tickets to and from points on other lines, that they have no passenger-train service, and that there will be little or no demand of them for interchangeable scrip or mileage tickets. We are of the opinion that the particular circumstances shown to us warrant the exemption of all carriers by rail which are not included in Appendix C. We therefore conclude that,
 53 until otherwise ordered, all such carriers be, and they are
 hereby exempted from the provision of paragraph 2, section
 22, of the interstate commerce act as amended.

In addition to the above, we further conclude that certain branches and parts of the lines of carriers hereinafter described shall also be exempted from the provisions of the amendatory act: The main line west of Roanoke, Va., and all branch lines in West Virginia of the Virginian Railway Company; the Key West extension south of Homestead, Fla., of the Florida East Coast Railway Company; the Orchard Beach branch extending from Old Orchard to Camp Ellis, Me., a distance of 3.8 miles, the branch from Fayban to Base Mount, Washington, N. H., a distance of 6.7 miles, and the Bethlehem branch, extending from Bethlehem Junction to Bethlehem, N. H., a distance of 3.4 miles, of the Boston & Maine Railroad Company; the Okolona branch of the Southern Railway Company operated by the Mobile & Ohio. The Okolona branch is located entirely within the State of Mississippi and connects with the Mobile & Ohio at Okolona and with the Gulf, Mobile & Northern at Houston, Miss. It does not connect with the Southern Railway. Its rails extend from Okolona to Calhoun City, a distance of 37.7 miles.

If any of the carriers exempted should hereafter desire to establish, issue, and maintain nontransferable interchangeable scrip coupon tickets under the conditions hereinbefore prescribed, our finding of exemption will not preclude them from doing so.

HALL, Commissioner, dissenting:

The statute under which we are acting is the interstate commerce act as amended by the addition to section 22 of the two paragraphs set forth in full in the majority report. These added paragraphs contain directions to this commission. They do not purport to lay any mandatory duty directly upon the carriers, and the carriers remain subject to all other sections of the act, including the direct mandatory duties laid upon them by the first four sections of the act, to establish just and reasonable fares and charges, free from unjust discrimination and undue prejudice of preference, and the requirements of section 6.

If, in following the directions thus given us, we require the carriers to do anything which runs counter to what the act itself requires, or which the act by its own terms prohibits and declares unlawful, they may deem themselves in this quandary that they must either violate the act or disobey our order, and in either case incur the penalties provided. It plainly behooves us, therefore, to construe the directions thus given us in such wise as shall be consistent with the rest of the act. That such was the intent of Congress is made plain in the first two sentences of the amendment as finally enacted. They read:

"(2) The commission is directed to require, after notice and hearing, each carrier by rail, subject to this act, to issue at such offices as may be prescribed by the commission interchangeable mileage or scrip coupon tickets at just and reasonable rates, good for passenger carriage upon the passenger trains of all carriers by rail subject to this act. The commission may in its discretion exempt from the provisions of this amendatory act either in whole or in part any carrier where the particular circumstances shown to the commission shall justify such exemption to be made."

These directions call for compliance by us in substance as well as in form. Our requirements are to be general and comprehensive. At just and reasonable rates, so determined by us after hearing, interchangeable tickets are to be issued by and honored on the passenger trains of all carriers by rail subject to the act, except a carrier exempted because of particular circumstances shown to us. The hearing was had. Such requirements if made without hearing would be arbitrary, and *and* therefore void. Are they not in legal effect also arbitrary to the extent that the results of the hearing are disregarded?

The requirements of the report are confined to the respondents enumerated in Appendix C, some 200 Class I carriers. Three or four times as many other carriers are thus in effect exempted. The record abundantly demonstrates that this exemption is not made because "particular circumstances shown" to us justified the exemption. As the report itself states, our order of investigation provided that each carrier seeking exemption should file application therefor indicating the grounds, many applications were filed, and evidence in support of some of them was received at the hearing. Plainly the exemption

is not confined to the carriers so heard. The process is reversed and all carriers are made exempt except those enumerated. The universality or general scope of the requirement is thus defeated.

But this departure from the statute is minor as compared with what is done in fixation of just and reasonable rates. Those terms are not unfamiliar. This commission has been construing and applying them for more than 35 years. The Director General of Railroads in 1918 fixed the minimum basis for standard fares at 3 cents per mile. In 1920, after a prolonged hearing and upon an ample

56 record, we found that those fares increased by 20 per cent would be just and reasonable. In 1922, after another prolonged hearing and upon another ample record, we found the 3.6-cent basic standard fare still just and reasonable. On the record now before us it was not shown, indeed there was no attempt to show, that this basic fare is not still just and reasonable. On the contrary, the whole showing was based on the premise that this basic rate should be retained, but that some passengers, those who purchased these tickets, should receive transportation at lower rates than other passengers.

One after another the grounds on which this was urged are dismissed by the majority as unsubstantiated until the "class" theory is reached. That, and the "obvious spirit" or "apparent purpose" of the statute, as the majority see it, alone support their finding that the rates resulting from sale of scrip coupon books in the denomination of \$90 at a reduction of 20 per cent will be just and reasonable for this class of travel.

The amendatory statute is one of nine bills introduced in Congress in April, 1921, all requiring issuance of interchangeable mileage tickets or books at reductions of either 20 per cent or 33 $\frac{1}{3}$ per cent from the regular fare, except one which named 2.5 cents per mile, subject to modification by us in proportion to substantial alterations in the average rate level. Two of these bills specified that the mileage books were to be for the use of commercial travelers. The majority say:

"The spirit and the apparent theory of the law is that carriers shall be required to sell such a ticket at something less than the standard fare, * * *."

That requirement was omitted from the bill before it became law.

57 In place of it was substituted the direction to us to require, after hearing, issuance and acceptance of tickets at just and reasonable rates. I submit that the fairer construction of the act is that the Congress expected us to determine in this case, as in any other, what the just and reasonable rate would be. If that rate is the standard rate—and to my mind nothing in this record shows that any lower rate would be just and reasonable—we should prescribe that rate and give our reasons in our report.

The majority recognize that the demand for this ticket comes chiefly from organizations of commercial travelers, and that what they seek is a lower rate than that paid by other travelers who do not hold such tickets. In other words the holders of these

tickets are to be in a preferred class, whatever may be the just and reasonable rate paid by the public generally. Special privilege dies hard, and the craving for it never dies. But I see no good reason why, reading the act as it is written, we should give to it the gloss for which these organizations contend. The "class" set up by the majority embraces only those, and all those, who have \$72 in money available with which to buy \$90 in scrip, and want to spend the money in that way. There is no other criterion or determining feature. The man or woman of small means, who must needs travel some, or would travel more if fares were lower, is excluded from the benefit of this reduction unless he or she can accumulate \$72 to be paid over in one payment, and can also look forward to 2,500 miles of travel in one year. The conclusions reached enable those with \$72 in hand to exchange it, in effect, for a cheaper money which may be used in payment "for carriage * * * on all passenger trains operated by said respondents," as the report prescribes. The exceptions do not exclude its use in payment of excursion or commutation fares. The report will not be complete, and under the statute no order can be made, until we shall have published rules and regulations for the issuance and use of such scrip. It may be that these rules will temper the broad language of the report.

I pass over other features of the amendatory statute and of the report. Some of them appear in the dissenting expressions of my colleagues. That the conclusion reached by the majority is in legal effect arbitrary and based upon an erroneous conception of this commission's powers and duties seems to me apparent from the report itself, which classifies not only passengers but carriers according to their means. The record contains nothing which convinces me that the use of this form of ticket will reduce the cost of service and therefore entitle the holder to a lower rate. The report does not so find, as I read it. I venture to here repeat what the chairman of the Committee on Interstate Commerce said in discussing this amendment on the floor of the Senate:

"In so far as the use of transportation in that form [scrip coupon ticket] reduces the cost of the service, I believe that it is constitutional and would be within the authority of the commission, if we adopt the amendment I have offered, to reduce the mileage rate of these mileage tickets or books to that extent; but when it comes to the further question of allowing a commercial traveler, simply because he is a commercial traveler, to travel at less than I have to pay when I travel, I rebel."

I am authorized by Commissioner Potter to say that he concurs in this expression of dissent.

59 DANIELS, Commissioner, dissenting:

The amendment of section 22 of the interstate commerce act is referred to in the majority report as follows:

"The amendment to the act pursuant to which this proceeding was instituted does not upon its face indicate upon what basis an inter-

changeable mileage or scrip ticket should be issued. The spirit and the apparent theory of the law is that carriers shall be required to sell such a ticket at something less than the standard fare, which would be just and reasonable, because it would be sold in such quantities as to stimulate travel and thereby increase net revenue, or at least offset any loss in revenue that might result from the reduction, in which event carriers would render greater service to the public. It is a well-recognized rule in trade and commerce that, other things being equal, as the price of an article is lowered the sales increase."

To the above interpretation of the amendment I take no exception. I think it difficult, if not impossible, to escape the conclusion that the intent of the amendment was to require us to prescribe in connection with mileage books or scrip coupon books a fare per mile less than the basic fare of 3.6 cents per mile. This conclusion is confirmed by that part of the amendment which, in imposing the duty upon the commission, reads: "* * * * and especiall it shall prescribe whether such tickets are transferable or nontransferable, and if the latter, what identification may be required; * * *."

It seems clear that if the fare per mile to be enjoyed in connection with these books were not less than the basic fare there would be no meaning in the requirement that we shall prescribe whether

60 or not the books shall be transferable or nontransferable.

Clearly there would be no reason why a book affording the basic fare of 3.6 cents per mile should not be transferable, either from the standpoint of the passenger or the carrier.

But the report contains another, and, as it seems to me, a very different interpretation of the amendment where, after pointing out certain distinguishing characteristics of commutation, convention, excursion, and tourist travel, it says:

"The convention, excursion, and tourist fares are admittedly established by carriers for the purpose of encouraging travel that might not otherwise occur. This amendment contemplates that carriers shall be required to recognize an additional class of passenger travel and to provide a special form of ticket, which shall be issued at just and reasonable rates fixed by us to cover such travel. The greatest users of this class of travel, if available at rates lower than the standard fare, will undoubtedly be commercial salesmen, business men, professional men, and others who make frequent trips."

This latter interpretation of the amendment is, in my judgment, erroneous, in that it attempts to base the decision of this case upon the assumption that there is another distinct "class of passenger travel" as yet unrecognized by the carriers but whose recognition that statute now forces upon them. The attempt to assimilate this newly discovered type of passenger travel to commutation, convention, excursion, or tourist travel is, in my judgment, not only fallacious, but directly contrary to the provisions of sections 2 and 3, which forbid all unjust discrimination and all "undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality * * * in any respect whatsoever."

61 This class of passenger travel which is newly created under the decision herein comprises only those whose income permits or whose business requires them to travel at least 2,500 miles a year and who have at least \$72 in cash to pay in advance for a \$90 scrip coupon book. It is implied that these persons are potentially extensive travelers, that their propensity to engage in heavily augmented travel is held in serious check because they can not now obtain transportation at a lower basic fare per mile than the general traveling public. But that they would increase their relative amount of travel to any greater extent than the general traveling public, if the latter, or a greater part thereof, were accorded the same discount in the purchase of transportation is certainly not proved by this record and is contrary to all reasonable expectation based on experience. This aspect of the case was voiced by a protesting State commission, which declared:

"If the Interstate Commerce Commission can and will issue mileage books in such denominations that they will be available to all persons traveling, and their purchase for ordinary trips will be available at 3 cents per mile, we are for such arrangement. We are not, however, in favor of the public generally being compelled to pay higher rates to support mileage books for special interests."

This so-called new class of passenger travel fails to have such distinguishing marks as constitute distinct characteristics in the case of commutation, convention, excursion, and tourist travel. As indicated correctly in the report, any diminution in the price of passenger travel per mile tends, in the absence of countervailing causes, to augment the aggregate of passenger travel. In this sense commutation, convention, excursion, and tourist fares are analogous to the proposed reduced fares for this new class of passenger travel involving an initial cash outlay of \$72. But there can be no 62 reasonable doubt that the same effect, to wit, augmented passenger travel, would tend to follow any and every reduction of fare, such as in the standard fare of 3.6 cents per mile for single passenger trips. In other words, we can not find in this tendency which affects all travel alike the distinguishing marks of a new and special class of passenger travel.

The other special classes of passenger traffic have certain specific marks or characteristics which distinguish them, more or less sharply, from passenger travel generally.

Commutation fares are based on the fact that many city workers live in relatively near-by suburban districts; journey daily to and from work; and make no demand for baggage service. The carrier can therefore with comparative certainty calculate in advance upon a steady, heavy, and daily volume of travel. This permits affording a rate of fare, lawfully open to all purchasers, but as a matter of fact utilized almost exclusively by a particular class. It is hedged about by the requirement of being used within the month for which the ticket is commonly valid. Its use is confined to stretches of line not

unduly long. Parallel suburban electric lines often afford a competitive service which would render the discontinuance of commutation fares by steam roads practically impossible. This constant, heavy, and daily volume of travel over short stretches of line differentiates this kind of service from passenger service generally.

The convention and excursion fares are characterized not merely by the lower rate per mile, but by the virtually predictable volume of traffic which these fares evoke. They permit preparation in
 63 advance for accommodating a more or less certainly ascertainable number of passengers whose journeys will fall within designated periods. While such fares undoubtedly stimulate travel because they offer a temporary abatement of the going rate, they are feasible only under conditions which afford the carriers full opportunity in advance to cope with the exceptional temporary volume of travel. It seems clear that a special excursion fare, good for three days, let us say, to Niagara Falls, will afford extra trainloads of passengers. But were this fare permanently to supplant the standard fare to the same destination it is clear that the extra volume of travel would not be continuous, and that, even if it were, the carrier could not ordinarily render the physical service continuously without impairment of other services which it is bound to afford. For example, a special excursion fare on a holiday may serve to fill coaches which would otherwise stand idle. But the temporary surplus of equipment ceases with the resumption of the ordinary tide of daily travel. The characteristic feature of convention and excursion travel may be found in the time limitations attached and the opportunity such time limitations afford to the carrier to provide the special accommodation necessary.

The tourist fares and tourist travel are unlike the types previously described in that they are generally seasonal and afford a longer period within which the tourist may elect to travel. It may be said, however, that the travel to which they apply is normally long-distance travel. This, of itself, delimits somewhat sharply the extent to which this service will be demanded. Pullman service is likely to be required by the tourist, and this relieves the carrier
 by railroad to a degree of certain burdens which the exclusive
 64 use of ordinary coaches would entail. The reservation of Pullman service by the tourist may also serve as something of advance notice of the time when such tickets must be honored. Furthermore, seasonal forecasts based on past experience allow some considerable knowledge in advance of the probable extent of tourist travel. In other words, the extent to which empty space on through trains for long trips is capable of being partly filled by the offer of tourist rates of fare is also characteristic of this traffic.

The above-described classes of passenger travel then have fairly well-defined and special characteristics. Commutation service is unique in its large volume, its regularity, and in the delimited area within which it is demanded and supplied. The extra service in-

volved in excursion and convention travel is capable of close calculation, in advance, both as to the revenue it is likely to yield and as to the extent to which special physical provision must be made therefor. Tourist travel is seasonal, is generally for long distances, and is also capable of fairly accurate provision.

The so-called additional class of travel which the report says the carriers must now recognize has seemingly no distinctive characteristics. Within the year's limit the travel may be taken at any time, on any train, and for any distance. It may be taken in one trip or distributed over as many journeys as the holder desires. Such a preferred class of travelers appears to be artificially and not naturally created. True, they may travel more miles than they would do but for the minimum one-fifth discount from the regular rate of fare. But so would practically all patrons of passenger service in the course of a year. In short, the requirements of the amendment

do not seem to me to necessitate, and other sections of the act
65 seem to me to preclude, the creation of a class of travelers entitled to the privileges herein proposed.

The majority report, which correctly rejects the analogy of the wholesale principle in commercial practice as applied to the purchase of passenger transportation, and which minimizes the suggestion that any substantial advantage would accrue to the carriers from the use of money paid in advance for scrip books, and which expressly concedes the fact that the passenger traffic as a whole is less profitable than other traffic, as gauged by the respective operating ratios, is practically silent as to the probable effect of the price set for scrip books upon the carriers' net railway operating income. As appears in Appendix A, the carriers' experienced passenger traffic officials estimate that the book sanctioned by the majority report and at the price sanctioned therein will result in 30 per cent of all revenue passenger travel moving on this basis. They similarly estimate the shrinkage in income, so far as not offset by increased travel induced by the discount on the scrip books, at \$60,000,000. If the carriers' net railway operating income continues as it has been for the past two years at about 4 per cent on the value of their property, and if the passenger traffic contributes thereto less than other traffic, the possible shrinkage may well evoke the most careful consideration. To offset the estimated loss of \$60,000,000 will apparently require an additional gross passenger revenue of \$300,000,000 annually, if we assume a passenger operating ratio of 80 per cent. Is it credible that the newly created class of travelers will expend anything like that sum over and above what they would spend for travel without any discount? For the first six months of

1922, the gross passenger revenue was but slightly in excess
66 of \$500,000,000. It is probable that a 20 per cent discount on tickets purchased only at a minimum initial cash outlay of
\$72 will augment the total of passenger gross revenue by 30 per cent?

As above suggested, it must be admitted that the amendment must be fairly construed as requiring some abatement from the standard rate of fare for the purchasers of interchangeable scrip or coupon tickets. But the abatement must be such as to conform with the provision requiring "just and reasonable rates" to be established. In the absence of any very certain knowledge of the effect upon carriers' net revenue, we are required perforce to experiment. But with current returns upon carrier property running about 4 per cent on the average, our discretion in experimentation must be narrow. Particularly is this true as to carriers like the New Haven and the Long Island where passenger revenue yield 50 and 70 per cent, respectively, of their gross revenue.

The passenger operating ratio for the first six months of 1922 has been estimated at about the passenger operating ratio for 1921, or at 85.24 per cent. This would imply that the passenger operating expense for the first six months of 1922 was about \$428,000,000. The residue from gross passenger receipts of about \$500,000,000 is \$72,000,000. When taxes and other items are deducted the net railway passenger operating income becomes \$48,600,000. If we double this for the 12 months of 1922, we have \$97,200,000 as the total passenger income. This is threatened by this decision with a reduction of \$60,000,000, less what may accrue from increased travel due to the discount on the scrip books.

The utmost I think we would be justified in considering experimentally is a 10 per cent abatement from the basic fare.

67 We might well exempt therefrom carriers whose current net railway income is so narrow that lessened passenger revenue would endanger their financial stability. We might, however, restore, at least experimentally, what was previously in effect, to wit, a book which would normally afford 1,000 miles of travel from whose use the estimated shrinkage in net passenger income, so far as not offset by increased demand, would be only about \$30,000,000. This would mean the sale of an interchangeable scrip coupon book, good for one year, containing nontransferable, interchangeable scrip coupon tickets in the aggregate sum of \$36, to be sold for \$32.40 cash. It is true that this limit is an arbitrary one and that it would create a preferred class of travel; but it has at least this argument in its favor, that such book mileage was common prior to the war; and when its use was properly policed, its existence did not effect a discrimination generally complained of as undue.

This plan would at least avoid the creation of a preferred class necessarily limited to a small per cent of the total number using passenger service, and would have the advantage of appealing to a much more numerous constituency of railway patrons, whereby to increase the use of passenger service and thereby offset the net loss that must result from according a special privilege to a smaller numerical class.

EASTMAN, Commissioner, dissenting:

The conclusion of the majority is founded upon two premises:

(1) That the "spirit and the apparent theory of the law is that carriers shall be required to sell such a ticket at something less than the standard fare."

68 (2) That the reduced fare will stimulate traffic.

With reference to the first premise: The law merely directs us to require carriers to issue "interchangeable mileage or scrip coupon tickets at just and reasonable rates." Nothing is said about rates "less than the standard fare," and I am not ready to believe that Congress wished us to imply something which it was unwilling to say openly.

With reference to the second premise: In *Reduced Rates*, 1922, 68 I. C. C., 676, I said at page 740:

"In this connection, a word as to passenger fares. Neither the statistics before us nor the apparent trend of traffic, in my opinion, justify a reduction in these fares at the present time. The main argument in support of a reduction is that the carriers would gain by the stimulus to traffic more than they would lose by the decrease in rate per mile. This, however, is not a matter which can be determined with any degree of certainty. It is rather a question of business judgment or wisdom. One of the chief objects of the return of the railroads to their owners was to reap the advantages of the exercise of private initiative. While public regulation is necessarily an interference with management, it was not the intent of the act, as I read it, that we should substitute our judgment for the judgment of the managers under such circumstances as these. But it is not unfair to say that the private managers have here an opportunity to demonstrate to the country the benefits of their initiative."

I still believe that this is sound doctrine, and it applies here as well as to a general reduction in passenger fares. There is little, if any, more reason for believing that the reduction granted by the

69 order in this proceeding to a few travelers will stimulate traffic to the advantage of the railroads than for believing that a general reduction would accomplish the same result.

Until better reasons can be advanced than those upon which the majority rely, therefore, I am not prepared to find that interchangeable mileage or scrip coupon tickets should be issued at "less than the standard fare." I fear that the action taken in this case will postpone the day of a reduction for the benefit of all travelers, which is far more to be desired.

APPENDIX A.—Book identified by photograph and autograph; use limited to purchaser; time limit, one year.

Reduction.	Mileage book.	Scrip book.	Estimated proportion of all travel using mileage or scrip book.		Total amount of reduction (estimated).	
			Percent.	Amount.	Mileage book.	Scrip book.
30 per cent.....	5,000-mile.....	\$180	24	\$240,000,000	\$72,000,000	\$72,000,000
25 per cent.....	do.....	180	21	210,000,000	52,500,000	52,500,000
20 per cent.....	do.....	180	18	180,000,000	36,000,000	36,000,000
15 per cent.....	do.....	180	15	130,000,000	22,500,000	22,500,000
35 per cent.....	3,000-mile.....	108	30	300,000,000	75,000,000	75,000,000
30 per cent.....	do.....	108	25	250,000,000	50,000,000	50,000,000
15 per cent.....	do.....	108	20	200,000,000	30,000,000	30,000,000
25 per cent.....	2,500-mile.....	90	35	350,000,000	87,500,000	87,500,000
20 per cent.....	do.....	90	30	300,000,000	60,000,000	60,000,000
20 per cent.....	1,000-mile.....	36	40	400,000,000	80,000,000	80,000,000

APPENDIX B.—Book without identification, good for presentation by holder.

Reduction.	Mileage book.	Scrip book.	Estimated proportion of all travel using mileage or scrip book.	Total amount of reduction (estimated).	
				Mileage book.	Scrip book.
30 per cent.....	5,000-mile.....	\$180	.....	\$225,000,000	\$225,000,000
25 per cent.....	do.....	180	.....	187,500,000	187,500,000
20 per cent.....	do.....	180	\$750,000,000	150,000,000	150,000,000
15 per cent.....	do.....	180	.....	112,500,000	112,500,000
25 per cent.....	3,000-mile.....	108	.....	200,000,000	200,000,000
20 per cent.....	do.....	108	.....	160,000,000	160,000,000
15 per cent.....	do.....	108	800,000,000	120,000,000	120,000,000
25 per cent.....	2,500-mile.....	90	.....	200,000,000	200,000,000
20 per cent.....	do.....	90	800,000,000	160,000,000	160,000,000
20 per cent.....	1,000-mile.....	36	850,000,000	170,000,000	170,000,000

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APPENDIX C.

The Akron, Canton & Youngstown Ry. Co.
 Alabama & Vicksburg Ry. Co.
 Alabama Great Southern R. R. Co.
 Ann Arbor R. R. Co.
 Arizona Eastern R. R. Co.
 The Atchison, Topeka & Santa Fe Ry. Co.
 Atlanta & West Point R. R. Co.
 Atlanta, Birmingham & Atlantic Ry. Co. and B. L. Bugg, receiver.
 Atlantic & St. Lawrence R. R. Co.
 Atlantic City R. R. Co.
 Atlantic Coast Line R. R. Co.
 Baltimore & Ohio R. R. Co.
 Baltimore, Chesapeake & Atlantic Ry. Co.
 Bangor & Aroostook R. R. Co.
 The Beaumont, Sour Lake & Western Ry. Co.

- Bessemer & Lake Erie R. R. Co.
- Bingham & Garfield Ry. Co.
- Boston & Albany R. R. Co. (the New York Central R. R. Co., lessee).
- Boston & Maine R. R.
- Buffalo & Susquehanna R. R. Corporation.
- Buffalo, Rochester & Pittsburgh Ry. Co.
- The Canadian Pacific Ry. Co. (lines in Maine).
- Carolina, Clinchfield & Ohio Ry.
- Central New England Ry. Co.
- Central of Georgia Ry. Co.
- The Central R. R. Co. of New Jersey.
- Central Vermont Ry. Co.
- Charleston & Western Carolina Ry. Co.
- The Chesapeake & Ohio Ry. Co.
- The Chicago & Alton R. R. Co. and William W. Wheelock and William G. Bierd, receivers.
- Chicago & Eastern Illinois Ry. Co.
- Chicago & Erie R. R. Co.
- Chicago & North Western Ry. Co.
- Chicago, Burlington & Quincy R. R. Co.
- Chicago, Detroit & Canada Grand Trunk Junction R. R. Co.
- Chicago Great Western R. R. Co.
- Chicago, Indianapolis & Louisville Ry. Co.
- Chicago, Milwaukee & St. Paul Ry. Co.
- Chicago, Peoria & St. Louis R. R. Co. and Bluford Wilson and Wm. Cotter, receivers.
- The Chicago, Rock Island & Gulf Ry. Co.
- 71 The Chicago, Rock Island & Pacific Ry. Co.
- Chicago, St. Paul, Minneapolis & Omaha Ry. Co.
- The Cincinnati, Indianapolis & Western R. R. Co.
- The Cincinnati, Lebanon & Northern Ry. Co.
- The Cincinnati, New Orleans & Texas Pacific Ry. Co.
- The Cincinnati Northern R. R. Co.
- The Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.
- The Colorado & Southern Ry. Co.
- Columbus & Greenville R. R. Co. and A. T. Stovall, receiver.
- The Cumberland Valley & Martinsburg R. R. Co.
- The Delaware & Hudson Co.
- The Delaware, Lackawanna & Western R. R. Co.
- The Denver & Rio Grande Western R. R. Co. and Joseph H. Young, receiver.
- The Denver & Salt Lake R. R. Co. and W. R. Freeman and C. Boettcher, receivers.
- Detroit & Mackinac Ry. Co.
- Detroit & Toledo Shore Line R. R. Co.
- Detroit, Grand Haven & Milwaukee Ry. Co.
- Detroit, Toledo & Ironton R. R. Co.

- The Duluth & Iron Range R. R. Co.
- Duluth, Missabe & Northern Ry. Co.
- The Duluth, South Shore & Atlantic Ry. Co.
- Duluth, Winnipeg & Pacific Ry. Co.
- El Paso & Southwestern Co.
- Elgin, Joliet & Eastern Ry. Co.
- Erie R. R. Co.
- Florida East Coast Ry. Co.
- Fort Smith & Western R. R. Co. and Charles T. O'Neil, receiver.
- The Fort Worth & Denver City Ry. Co.
- Fort Worth & Rio Grande Ry. Co.
- The Galveston, Harrisburg & San Antonio Ry. Co.
- Georgia & Florida Ry. and John Skelton Williams, receiver.
- Georgia R. R.
- Georgia Southern & Florida Ry. Co.
- Grand Rapids & Indiana Ry. Co.
- Grand Trunk Western Ry. Co.
- 72 The Great Northern Ry. Co.
- Green Bay & Western R. R. Co.
- Gulf & Ship Island R. R. Co.
- Gulf, Colorado & Santa Fe Ry. Co.
- Gulf, Mobile & Northern R. R. Co.
- The Hocking Valley Ry. Co.
- Houston & Texas Central R. R. Co.
- The Houston East & West Texas Ry. Co.
- Illinois Central R. R. Co.
- International & Great Northern Ry. Co. and James A. Baker, receiver.
- The Kanawha & Michigan Ry. Co.
- The Kansas City, Mexico & Orient R. R. Co. and Wm. T. Kemper, receiver.
- Kansas City, Mexico & Orient Ry. Co. of Texas.
- The Kansas City Southern Ry. Co.
- Kansas, Oklahoma & Gulf Ry. Co.
- The Lake Erie & Western R. R. Co.
- Lake Superior & Ishpeming Ry. Co.
- The Lehigh & Hudson River Ry. Co.
- Lehigh & New England R. R. Co.
- Lehigh Valley R. R. Co.
- The Long Island R. R. Co.
- Los Angeles & Salt Lake R. R. Co.
- Louisiana & Arkansas Ry. Co.
- Louisiana Ry. & Navigation Co.
- Louisiana Western R. R. Co.
- Louisville & Nashville R. R. Co.
- Louisville, Henderson & St. Louis Ry. Co.
- Maine Central R. R. Co.
- Maryland, Delaware & Virginia Ry. Co.
- The Michigan Central R. R. Co.

Midland Valley R. R. Co.
 The Minneapolis & St. Louis R. R. Co.
 Minneapolis, St. Paul & Sault Ste. Marie Ry. Co.
 Mississippi Central R. R. Co.
 Missouri, Kansas & Texas Ry. Co. and C. E. Schaff, receiver.
 The Missouri, Kansas & Texas Ry. Co. of Texas.
 Missouri Pacific R. R. Co.
 Mobile & Ohio R. R. Co.
 The Monongahela Ry. Co.
 Montour R. R. Co.

Morgan's Louisiana & Texas R. R. & S. S. Co.
 The Nashville, Chattanooga & St. Louis Ry.

The Nevada Northern Ry. Co.
 73 New Jersey & New York R. R. Co.
 New Orleans & Northeastern R. R. Co.

New Orleans Great Northern R. R. Co.
 New Orleans, Texas & Mexico Ry. Co.
 The New York Central R. R. Co.
 The New York, Chicago & St. Louis R. R. Co.
 New York Connecting R. R. Co.
 The New York, New Haven & Hartford R. R. Co.
 New York, Ontario & Western Ry. Co.
 New York, Susquehanna & Western R. R. Co.
 Norfolk & Western Ry. Co.
 Norfolk Southern R. R. Co.
 Northern Alabama Ry. Co.
 Northern Pacific Ry. Co.
 Northwestern Pacific R. R. Co.
 Oregon Short Line R. R. Co.
 Oregon-Washington R. R. & Navigation Co.
 Panhandle & Santa Fe Ry. Co.
 The Pennsylvania R. R. Co.
 Pere Marquette Ry. Co.
 Perkiomen R. R. Co.

Philadelphia & Reading Ry. Co.
 The Pittsburgh & Lake Erie R. R. Co.
 The Pittsburgh & Shawmut R. R. Co.
 The Pittsburgh & West Virginia Ry. Co.
 The Pittsburgh, Cincinnati, Chicago & St. Louis R. R. Co.
 The Pittsburgh, Shawmut & Northern R. R. Co. and Henry S.
 Hastings, receiver.

The Port Reading R. R. Co.
 Quincy, Omaha & Kansas City R. R. Co.
 Richmond, Fredericksburg & Potomac R. R. Co.
 Rutland R. R. Co.
 The St. Joseph & Grand Island Ry. Co.
 The St. Louis, Brownsville & Mexico Ry. Co.
 St. Louis-San Francisco Ry. Co.
 St. Louis, San Francisco & Texas Ry. Co.

- St. Louis Southwestern Ry. Co.
 St. Louis Southwestern Ry. Co. of Texas.
 San Antonio & Aransas Pass Ry. Co.
 San Antonio, Uvalde & Gulf R. R. and A. R. Ponder, receiver.
 Seaboard Air Line Ry. Co.
 Southern Ry. Co.
 Southern Pacific Co.
 Spokane International Ry. Co.
 Spokane, Portland & Seattle Ry. Co.
 74 The Staten Island Rapid Transit Ry. Co.
 Tennessee Central Ry. Co.
 Texarkana & Fort Smith Ry. Co.
 Texas & New Orleans R. R. Co.
 The Texas & Pacific Ry. Co. and J. L. Lancaster and C. L. Wallace, receivers.
 The Toledo & Ohio Central Ry. Co.
 Toledo, Peoria & Western Ry. Co. and S. M. Russell, receiver.
 Toledo, St. Louis & Western R. R. Co. and W. L. Ross, receiver.
 The Trinity & Brazos Valley Ry. Co. and John A. Hulen, receiver.
 The Ulster & Delaware R. R. Co.
 Union Pacific R. R. Co.
 Utah Ry. Co.
 Vicksburg, Shreveport & Pacific Ry. Co.
 The Virginian Ry. Co.
 Wabash Ry. Co.
 West Jersey & Seashore R. R. Co.
 Western Maryland Ry. Co.
 The Western Pacific R. R. Co.
 The Western Ry. of Alabama.
 The Wheeling & Lake Erie Ry. Co.
 The Wichita Falls & Northwestern Ry. and C. E. Schaff, receiver.
 Wichita Valley R. R. Co.
 The Yazoo & Mississippi Valley R. R. Co.
 By the commission.
 [SEAL.]

GEORGE M. MCGINTY,
Secretary.

75 *Exhibit D to petition.*

Interstate Commerce Commission.

No. 14104.

Interchangeable mileage ticket investigation.

Submitted February 23, 1923. Decided March 6, 1923.

Rules and regulations prescribed to govern the issuance and use of interchangeable scrip coupon ticket dealt with in the original report, 77 I. C. C., 200.

Appearances same as in original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, Chairman:

In our original report, 77 I. C. C., 200, we found that on and after March 15, 1923, carriers by rail, respondents herein, enumerated in Appendix C of that report, shall establish, issue, and maintain at such offices as we may designate a nontransferable interchangeable scrip coupon ticket in the denomination of \$90, which shall be sold at a reduction of 20 per cent from the face value of the ticket, and that the rates resulting from that reduction will be just and reasonable for this class of travel. We further found that the scrip coupon ticket shall be good within one year from the date of its sale for carriage of passengers on all passenger trains operated by said respondents, except that in the case of special or extra-fare trains its use shall be subject to the payment by the passenger of the special or extra fare.

By request of the parties we deferred action on certain of the rules and regulations which shall govern the issuance and use of the scrip ticket so that they might confer. A conference was had, 76 at which an agreement was reached on all except three of the rules and regulations. The latter were made the subject of a further hearing. They relate to (a) the character of the identification which shall be required, (b) whether the scrip coupon ticket shall be good for carriage on all passenger trains upon presentation to conductors or shall be good only when such coupon ticket has been exchanged for a one-way or round-trip ticket, and (c) the baggage privileges to which the lawful holders of the tickets are entitled and whether the coupons shall be accepted by the respondents in payment of excess-baggage charges.

The rules proposed by respondents contemplate that in order to protect their revenues and to prevent scalping, the owner of the coupon ticket shall be required to identify himself by photograph and autograph. There is no disagreement among the parties with respect to the autograph requirement; but the commercial travelers, although unqualifiedly in favor of preventing improper use of the book, oppose the suggestion that a photograph also be required. Photographs for this purpose can be had at nominal cost in almost any city or town. An autograph requirement standing alone would not be sufficient to protect the nontransferability of the ticket. We find that the ticket should be protected by both photograph and autograph.

The second rule in dispute provides that coupons must be exchanged at ticket offices for one-way or round-trip tickets. This rule requires both a consideration of the law and of many practical problems. The law directs that carriers by rail subject to the interstate commerce act be required to establish, issue, and maintain mileage or scrip coupon tickets at just and reasonable rates, "good for passenger carriage upon the passenger trains of all carriers by rail

subject to this act." The law also provides that before making any order requiring the issuance of such tickets we shall, "make and publish such reasonable rules and regulations for their issuance and use as in its (our) judgment the public interest demands." Respondents say that the phrase "good for passenger carriage upon the passenger trains of all carriers by rail subject to this act," does not require that the coupons be honored by conductors on trains and that that provision of the law would be met under the rule which contemplates that, except at nonagency stations, or stations not open for the sale of tickets, coupons shall be exchanged for one-way or round-trip tickets.

Respondents' testimony indicates that the duty of collecting ordinary tickets in connection with the routine duty imposed upon each conductor of reporting train collections to the auditor occupies practically all of the time of the conductor not devoted to the safe and proper operation of his train; that the additional burden incident to the calculation of fares and the detachment of scrip will impede the conductor to an extent inconsistent with his responsibility for the safe and proper operation of the train; that it is unreasonable and impracticable to expect conductors to know or to be able to determine the fares to various points throughout the country; that if coupons must be honored on trains loss of revenue will result therefrom, as scrip is equivalent to cash to the line honoring it; that conductors have not adequate facilities to safeguard the scrip; that it would be impossible to prevent the scalping of tickets, and loss of revenue from that source; that their rule that coupons be exchanged at ticket offices is reasonable and that the inconvenience the rule might impose upon passengers in some instances is outweighed by the revenue and practical considerations referred to. Furthermore, a universal book good on practically all railroads throughout the United States is not comparable, in this respect, with the mileage books sold during prior years, which were honored in limited territories.

Where the destination of a passenger is a point beyond the run of the conductor it would usually be necessary as a practical matter for each conductor to detach coupons sufficient to cover only the fare over his run. In some instances that would result in the payment by the passenger of a higher through fare than would be the case if coupons had been exchanged for a regular through ticket. However, competition between the short and long route carriers would undoubtedly tend to minimize such instances.

Respondents stress the point that if they are required to honor coupons on trains it will be impossible to prevent abuse of the baggage privileges. They refer to the ease with which a person could check his baggage to a given point and then use some other kind of transportation. To the extent that that abuse would be possible it, of course, would result in the free transportation by the railroads of the baggage. While methods could undoubtedly be provided

which would minimize such abuse, it is apparent that it would be difficult for respondents successfully to police the baggage-checking privileges should they be required to honor coupons on trains.

The practical and revenue aspects of the situation appear to us to be of greater and of more controlling importance than the inconvenience to the passengers, under the rule that coupons must be exchanged for tickets, although when stations are crowded the inconvenience may be serious. In the light of these considerations, we

79 are convinced that, unless the law compels a different conclusion, respondents' rule should be approved. When read in connection with that part of the law which requires us to make and publish reasonable rules and regulations for the issuance and use of coupon tickets, we feel that the phrase "good for passenger carriage upon the passenger trains of all carriers by rail subject to this act" is susceptible of the construction placed upon it by respondents, and that it does not require that the coupon ticket, in the form in which issued, must necessarily be honored upon passenger trains in all circumstances.

Where a passenger boards a train at a nonagency station or at a station where tickets can not be purchased respondents' rule provides that coupons will be good for carriage on trains only to the terminus of the run of the first conductor, and that if the destination of the passenger be a point beyond, the passenger must leave the train and exchange coupon for a ticket. We think in such circumstances respondents' proposed rule is unreasonable. It should be optional with the passenger to leave the train to exchange coupons for a ticket or to remain on the train, in which latter event the succeeding conductor or conductors should honor the coupons. With that exception we find that respondents' rule, that coupons shall be exchanged at ticket offices for one-way or round-trip tickets, is reasonable. In *In re Mileage Books*, 28 I. C. C., 318, we found a similar rule not unjustly discriminatory or otherwise in violation of the act.

Respondents' rule with respect to baggage provides that, with the exception of passengers who board trains at nonagency stations, baggage will not be checked except on presentation of a one-way ticket, issued in exchange for scrip. With this condition complied

80 with baggage will be checked free up to 150 pounds, regardless of the starting point or destination of passenger. Under respondents' rules excess-baggage charges must be paid in cash. Commercial travelers urge that respondents should accept coupons in payment of excess-baggage charges. No good reason appears why the holder of this form of ticket should not be required to pay such charges in cash. We find that respondents' rule with respect to baggage is reasonable.

Respondents' rules provide that the scrip tickets shall be sold at principal stations on lines of issuing and initial carriers shown in tariffs, and that to obtain scrip tickets at the less important stations the person intending to purchase such a ticket must give the agent at such points at least three days' advance notice, ex-

clusive of Sundays and holidays. The phrase "principal stations" means stations at which interline tickets are ordinarily sold. As thus defined, there was no disagreement with respect to this rule. We find it to be reasonable.

Among the rules and regulations proposed by respondents are two which provide (a) that where the Federal or State Governments elect to take advantage of the scrip tickets no further reduction will be accorded under the land-grant laws, appropriation acts, or State statutes for the transportation of officers and enlisted men of the United States Army or Navy, or of the State National Guard, or other persons identified with the Federal or State military establishments; and (b) that scrip books will not be issued in lieu of Federal or State transportation requests or other nonnegotiable paper. We do not give our assent to these rules, because they present questions which, in our judgment, can be dealt with more effectively by negotiation between the railroads and the appropriate departments of the Federal and State Governments.

81 Under the act as amended we are authorized to exempt from its provisions "either in whole or in part any carriers where the particular circumstances shown to the commission shall justify such exemption to be made." The findings of our original report are applicable to carriers by rail enumerated in Appendix C thereof. We have since given this question further consideration. We find that the particular circumstances shown justify the exemption of the following carriers: Bingham & Garfield Railway Company; The Kansas City, Mexico & Orient Railroad Company and Wm. T. Kemper, receiver; Kansas City, Mexico & Orient Railway Company of Texas; Lehigh & New England Railroad Company; Utah Railway Company; The Nevada Northern Railway; San Antonio, Uvalde & Gulf Railroad and A. R. Ponder, receiver; The Ulster & Delaware Railroad Company; Elgin, Joliet & Eastern Railway Company; and the Canadian Pacific Railway Company lines in Maine.

Testimony introduced by respondents indicates that it will be physically impossible for them to publish tickets and put them on sale at ticket offices by March 15. They request that we allow them until May 1.

We find and conclude that on and after May 1, 1923, respondents hereinbefore described shall be governed in the issuance and use of the scrip coupon ticket prescribed by us in our original report by the rules and regulations in Appendix D, which we find will be just and reasonable.

An appropriate order will be entered.

Commissioners Hall, Daniels, and Potter dissent.

82 APPENDIX D TO SUPPLEMENTAL REPORT—RULES AND REGULATIONS.

RULE 1. Stations at which interchangeable scrip books are on sale:
(a) At principal stations on lines of the issuing and initial carriers shown herein: To obtain scrip books at minor stations intending purchaser must give agent at least three days' advance notice, exclusive of Sundays and holidays.

(b) Scrip books will be honored under conditions provided herein for local and interline trips over the lines of the issuing and participating carriers named on pages — to —.

NONTRANSFERABLE INTERCHANGEABLE SCRIP BOOKS.

RULE 2. Description of scrip books:

Nontransferable interchangeable scrip books (Form I. S.), each containing eighteen hundred (1,800) coupons of the face value of five (5) cents each, which may be used in exchange for first-class transportation at the charges and under the regulations set forth herein, will be sold at principal ticket offices. The scrip book will consist of a photographic signature-witnessed contract, coupons and cover, each bearing the name or initials of the issuing carrier and the same form and consecutive serial number.

RULE 3. Individual use and conditions of sale:

Scrip books will be good only for use by the individual to whom issued and only when the following conditions of issue and sale have been complied with:

83 (a) When the book bears the photograph of the person for whose exclusive use it is issued. An unmounted photograph, approximately one and one-half inches wide by one and three-fourths inches long, printed on thin paper, showing the head and shoulder likeness of the purchaser and sufficiently plain for the purpose of identification, must be furnished by purchaser and must be pasted by ticket agent in space provided for that purpose. Photographs on cardboards or post cards will not be accepted.

(b) When the person to whom issued has affixed his or her signature thereto in ink, in presence of an agent of the issuing carrier at time of sale. If the purchaser be a woman, agent will require her to sign her name in full, using her Christian or given name. Married women must be required to affix their full names to scrip books, for the purpose of identification; for example, the wife of William Smith, whose given name is Mary J. Smith, should not sign her name as Mrs. Wm. Smith, but as Mary J. Smith.

(c) When book is officially stamped, limited, and signed by selling agent.

(d) The name, business occupation, and residence of purchaser must be written in ink by selling agent in space provided therefor on agent's stub and auditor's stub.

(e) Identification of the holder of a scrip book or an exchange passage ticket must be established, by signature and otherwise, to the satisfaction of any agent or conductor or collector, whenever requested.

(f) Nontransferrable: If a scrip book be presented to any agent, conductor, or collector for the transportation of any person
84 other than the person whose name is signed to the contract of the scrip book and whose photograph is affixed thereto, it will not be honored but will be forfeited, and any such agent, conductor,

or collector will confiscate such scrip book, and collect lawful tariff fare.

(g) If any of the conditions or stipulations governing the use of an interchangeable scrip book (Form I. S.) are not complied with the scrip book shall thereby become void, and the person to whom issued forfeits all rights thereto, and all sums of money paid therefor.

(h) The Federal law providing for the sale of scrip books prescribes the following penalty: " * * * Any person who shall wilfully offer for sale or carriage any such ticket contrary to the said rules and regulations shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not to exceed \$1,000."

RULE 4. Alterations:

If any scrip book bears any alteration or erasure, or if more than one date be punched in margin, it will be void and will be confiscated by any agent, conductor, or collector of any carrier.

RULE 5. Responsibility:

A carrier selling a scrip book, or issuing an exchange passage ticket, acts only as agent for participating carriers and is not responsible beyond its own line.

RULE 6. Charge for scrip books:

Scrip books of face value of ninety dollars (\$90.00) will be sold for seventy-two dollars (\$72.00) each. No reduction for children.

85 RULE 7. Limit for scrip book:

One year from date of sale, after which scrip book will be void. (See Rule 17-b.)

Method of obtaining transportation on scrip books.

RULE 8. Exchange at ticket offices:

Coupons of scrip books must be exchanged at ticket offices as follows:

(a) For one-way tickets on basis of normal one-way adult first-class fares as published in tariffs of carriers parties lawfully filed.

(b) For round-trip tickets on basis of double the normal way adult first-class fares where tariffs of the carriers parties hereto lawfully filed provide for sale of round-trip tickets at double one-way fares.

(c) Collections for scrip books should be advanced or reduced to end in 0 or 5: Agents, conductors, and collectors in making detachments from scrip books when one-way or double one-way tariff fare does not end in 0 or 5 should, where it ends in 3 or 4 or 8 or 9, advance the one-way or double one-way tariff fare to end in 0 or 5, but where the fare ends in 1 or 2 or 6 or 7 the detachment should be reduced to the nearest 0 or 5.

(d) Scrip books will not be honored in exchange for the following:

One-way tickets sold at reduced fares.

One-way nonbaggage suburban fares.

Round-trip tickets sold at reduced fares.

Extra-fare charges on extra-fare trains.

- 86 One-way tickets issued as part of round-trip transportation for which reduced fares on certificate plan are authorized.

Commutation tickets.

Excess-baggage or other baggage charges.

Immigrant tickets.

Inland proportional fares applying between Atlantic and Pacific ports on traffic between Europe and the Orient and Australasia.

Inland proportional fares applying between Atlantic, Pacific, and Gulf ports on traffic between Cuba and China.

Nor for any service or charge other than for one-way tickets on basis of normal one-way adult first-class fares or round-trip tickets on basis of double normal one-way adult first-class fares as specified above.

(e) Sleeping or parlor car tickets must not be issued by agents on scrip books but only on presentation of exchange passage tickets accompanied by scrip books. Under no circumstances will scrip books be honored on trains except as specified in rule 9 following:

RULE 9. Honoring scrip books from nonagency stations or stations not open for the sale of tickets:

Where passengers board trains at nonagency stations or at stations not open for the sale of tickets, scrip books will be honored on train for one-way passage within the run of the initial conductor or collector. Scrip coupons will also be accepted for transportation beyond the run of first conductor or collector on the train upon which the passenger first takes passage. Conductor or collector, when

- 87 honoring scrip coupons, will endorse on back thereof the names or numbers of the stations between which such scrip coupons are honored.

RULE 10. Minimum detachment from scrip books shall be ten (10) cents.

RULE 11. Detached scrip coupons will not be honored by any carrier.

RULE 12. Insufficient coupons to cover journey:

In the event the scrip coupons attached to one book be not sufficient to pay for an exchange passage ticket to destination of passenger, such coupons will be accepted at face value in part payment for an exchange passage ticket to such destination, the remainder of the fare to be paid in cash or in scrip coupons from another book or books of Form I. S. issued to the same person, except that cash will not be accepted in part payment in any case in which the standard one-way fare is \$90 or greater. When cash is collected by the agent to make up the difference in the fare account of insufficient scrip the amount of cash must be also endorsed on stub, contract, and initial coupon of exchange passage ticket thus "\$—— cash." The same method will apply when scrip books containing insufficient coupons are presented to conductors or collectors on trains for passage under conditions as outlined in rule 8. When conductors or

collectors make cash collections in connection with insufficient scrip they must issue cash-fare receipt for the amount of cash collected.

RULE 13. Scrip-book cover must be presented on train:

Each scrip book from which coupons have been detached in payment for an exchange passage ticket must be presented to conductors or collectors together with such exchange passage ticket when the latter is presented for passage.

88 **RULE 14.** Disposition of covers:

When the last coupon of any scrip book is detached by ticket agent the cover of such book must ~~be~~ left in the hands of the passenger to be presented together with the exchange passage ticket to conductors or collectors. The last conductor or collector honoring exchange ticket will in every case lift, cancel, and forward to the auditor with his collections the empty cover of scrip book.

Issuing and honoring exchange passage tickets.

The following rules will govern the issuing and use of exchange passage tickets:

RULE 15. Exchange passage tickets:

(a) Form of tickets: When special printed forms of exchange passage tickets are not in stock, agents should use regular forms of one-way tickets (or round-trip tickets sold at double one-way fare), such tickets to be plainly endorsed or punched "Scrip" on contract and each coupon, and also marked or punched as indicated in paragraph (b) hereof.

(b) Endorsing tickets: Exchange passage tickets must be plainly printed, punched, or marked with office pen and ink or rubber stamp "Scrip" on contract and each coupon and the number (or numbers) of the scrip book, or books, on which such ticket is issued must also be marked in office pen and ink on contract and each coupon thus: "—— R. R., I. S. No. ——." When cash is collected by agent to make up the difference in fare account of insufficient scrip the amount of cash must be also endorsed on stub, contract, and initial coupon of exchange passage ticket thus "\$—— cash."

89 (c) Nontransferable; If an exchange passage ticket be presented to any agent, conductor, or collector for the transportation of any person other than the person whose name is signed to the contract of the scrip book and whose photograph is affixed thereto, it will not be honored but will be forfeited, and any such agent, conductor, or collector will confiscate such exchange ticket together with the scrip book and collect lawful tariff fare.

(d) Alterations: If any exchange ticket bears any alteration or erasure, or if more than one date be punched in margin, it will be void and will be confiscated by any agent, conductor, or collector of any carrier over which it is routed.

(e) Class of tickets: Exchange passage tickets will be good for first-class passage.

(f) Signature tickets: Exchange passage tickets reading from points east of Ogden, Salt Lake City, Albuquerque, or El Paso,

reading to California, also through California to points in British Columbia, Oregon, and Washington, or in the reverse direction, must be signed by purchaser with office pen and ink in presence of the selling agent. If the purchaser be a woman, agent will require her to sign her name in full, using her Christian or given name. Married women must be required to affix their full names to exchange passage tickets, for the purpose of identification; for example, the wife of William Smith, whose given name is Mary J. Smith, should not sign her name as Mrs. Wm. Smith, but as Mary J. Smith.

RULE 16. Exchange passage tickets not accepted unless scrip book is also presented:

Exchange passage tickets will not be honored for passage
90 nor for checking of baggage unless presented together with the cover of scrip book, or covers of scrip books, in exchange for coupons for which such passage tickets were issued.

RULE 17. Children:

No detachment less than full adult fare will be made.

RULE 18. Limits:

(a) Tickets issued in exchange for scrip coupons must be limited in accordance with limits shown in tariffs quoting fares used in making detachments. Agents will designate on each ticket by punch cancellation or otherwise the date to which such ticket is limited. Tickets must be used to destination not later than midnight of date to which ticket is limited. After midnight of date punched or endorsed on ticket it will not be good for passage.

(b) Tickets issued in exchange for scrip coupons will in no case be limited beyond the date of the expiration of the scrip books in exchange for which issued.

RULE 19. Stop-overs:

Stop-overs will be allowed as authorized in Local, Interdivision, and Joint Passenger Tariff——, I. C. C. ——, issued by——, agent, supplements thereto or new issues thereof, and in the tariffs of the carriers parties hereto as lawfully filed.

RULE 20. Routes:

Tickets issued in exchange for scrip coupons will be routed via lines of issuing, initial, and participating carriers shown herein in accordance with routes shown in tariffs quoting fares used in
91 making detachments. Exchange passage tickets must not be routed over lines not shown as participating carriers herein.

RULE 21. General privileges:

Except as otherwise specifically provided herein, holders of scrip books and exchange passage tickets issued under this tariff will be entitled to such optional routes, side trips, extension of limits account illness, washouts, etc., and other privileges as may be provided in the tariffs of the carriers parties hereto lawfully filed.

RULE 22. Transfers:

When fare used in making detachment from scrip book (as shown in tariff lawfully filed) includes transfer of passenger or baggage, or both, at junction points, and the tariff so indicates, the exchange

passage ticket will correspondingly include transfer of passenger or baggage, or both, at such points. When tariff provides for additional collections account transfer charges for passengers or baggage, or both, holder of exchange passage ticket must be required to pay such transfer charges in cash.

Baggage regulations.

RULE 23. Baggage regulations:

(a) Baggage will be checked in accordance with rules and regulations contained in Local, Interdivision, and Joint Baggage Tariff —, I. C. C. No. —, issued by —, agent, supplements thereto or new issues thereof, only upon presentation of exchange passage tickets, together with the scrip books described in said passage tickets, except that scrip coupons undetached from a scrip
92 book will be honored by conductors or collectors on trains for transportation of authorized allowance of baggage from a non-agency station, or from an agency station not open for the sale of tickets, but baggage will not be checked on scrip coupons beyond the run of the conductor. If the final destination of passenger be a point beyond the run of conductor of train upon which the initial passage is taken the succeeding conductor or conductors shall recheck the baggage to the terminus of their respective runs.

(b) The privilege of transportation of baggage from an agency station open for the sale of tickets, attaches only to an exchange passage ticket when presented in connection with a scrip book and then only when the baggage offered for transportation is carried by the passenger to whom such scrip book and exchange passage ticket belong.

(c) The excess-weight rates, excess-valuation rates, and all other rates, charges, rules and regulations relative to the transportation of baggage, as published in Joint Baggage Tariff —, I. C. S. No. —, issued by —, agent, supplements thereto or new issues thereof, apply to the transportation of baggage presented by the owners of scrip books, except that such books will not be accepted in payment of baggage charges of any character.

(d) The maximum free allowance of baggage which may be checked on exchange passage tickets will be 150 pounds regardless of starting point or destination of passenger.

93 Redemption of scrip books (Form I. S.) and exchange passage tickets.

Wholly unused or partially used scrip books or exchange passage tickets will be redeemed by the issuing carrier on the following basis if presented within eighteen (18) months from date of issue:

RULE 24. Scrip books:

Wholly unused scrip books will be redeemed at the price paid therefor, i. e., \$72.00.

Partially used scrip books will be redeemed (a) by deducting the total face value of the coupons detached and used from the purchase price of the book, i. e., seventy-two dollars (\$72.00), refunding the difference; (b) if coupons of face value of seventy-two dollars (\$72.00) or more have been detached and used, the remaining coupons will have no redemption value; (c) scrip books will be redeemed only by the issuing carrier:

RULE 25. Exchange passage tickets:

Wholly unused or partially used exchange tickets will not be redeemed in cash, but will be redeemed by the issuing carrier only by issue of redemption scrip of value equal to the redemption value of said ticket, to be honored in connection with the original scrip book and within the limit of said book. If the original book has been surrendered, a new book with coupons of value equal to the unused exchange passage ticket bearing same limitation as original book will be issued.

RULE 26. Scrip books and exchange passage tickets:

Identification: The person presenting for redemption an unused or partially used scrip book or exchange passage ticket must
94 be identified as the original purchaser of the scrip book to the satisfaction of the officer or agent to whom the application for redemption is presented.

RULE 27:

Scrip books will not be bulletined or duplicated if lost, mislaid, or stolen, nor will any refund be made on such account; nor if the book is subsequently located will the limit thereof be extended, nor will any exception be made to the plan of redemption hereinbefore stated.

ORDER.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 6th day of March, A. D. 1923.

No. 141040.

Interchangeable mileage ticket investigation.

It appearing that on January 26, 1923, the commission entered its report in the above-entitled proceeding, containing its findings of fact and conclusions thereon, and further hearing having been had with respect to the rules and regulations which shall govern the issuance and use of the interchangeable scrip coupon ticket described in said report; and the commission having, on the date hereof, made and filed its supplemental report containing its further findings of fact and conclusions thereon, which report and the said report of January 26, 1923, are hereby referred to and made a part hereof:

95 It is ordered that the respondents hereinafter named be, and they are hereby, notified and required to establish, issue, maintain, and, on and after May 1, 1923, keep in force, upon notice

to this commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, a nontransferable interchangeable scrip coupon ticket in the denomination of \$90, which shall be sold at a reduction of 20 per cent from the face value of the ticket, good within one year from the date of its sale for the carriage of passengers on all passenger trains operated by said respondents, except that in the case of special or extra-fare trains its use shall be subject to the payment in cash by the passenger of the special or extra fare, and except in so far as hereinafter specifically exempted:

- The Akron, Canton & Youngstown Ry. Co.
- Alabama & Vicksburg Ry. Co.
- Alabama Great Southern R. R. Co.
- Ann Arbor R. R. Co.
- Arizona Eastern R. R. Co.
- The Atchison, Topeka & Santa Fe Ry. Co.
- Atlanta & West Point R. R. Co.
- Atlanta, Birmingham & Atlantic Ry. Co. and B. L. Bugg, receiver.
- Atlantic & St. Lawrence R. R. Co.
- Atlantic City R. R. Co.
- Atlantic Coast Line R. R. Co.
- The Baltimore & Ohio R. R. Co.
- Baltimore, Chesapeake & Atlantic Ry. Co.
- Bangor & Aroostook R. R. Co.
- The Beaumont, Sour Lake & Western Ry. Co.
- Bessemer & Lake Erie R. R. Co.
- Boston & Albany R. R. Co. (The New York Central R. R. Co., lessee).
- Boston & Maine R. R.
- Buffalo & Susquehanna R. R. Corporation.
- Buffalo, Rochester & Pittsburgh Ry. Co.
- Carolina, Clinchfield & Ohio Ry.
- Central New England Ry. Co.
- Central of Georgia Ry. Co.
- The Central R. R. Co. of New Jersey.
- 96 Central Vermont Ry. Co.
- Charleston & Western Carolina Ry. Co.
- The Chesapeake & Ohio Ry. Co.
- The Chicago & Alton R. R. Co. and William W. Wheelock and William G. Bierd, receivers.
- Chicago & Eastern Illinois Ry. Co.
- Chicago & Erie R. R. Co.
- Chicago & North Western Ry. Co.
- Chicago, Burlington & Quincy R. R. Co.
- Chicago, Detroit & Canada Grand Trunk Junction R. R. Co.
- Chicago Great Western R. R. Co.
- Chicago, Indianapolis & Louisville Ry. Co.
- Chicago, Milwaukee & St. Paul Ry. Co.
- Chicago, Peoria & St. Louis R. R. Co. and Bluford Wilson and Wm. Cotter, receivers.
- The Chicago, Rock Island & Gulf Ry. Co.

- The Chicago, Rock Island & Pacific Ry. Co.
- Chicago, St. Paul, Minneapolis & Omaha Ry. Co.
- The Cincinnati, Indianapolis & Western R. R. Co.
- The Cincinnati, Lebanon & Northern Ry. Co.
- The Cincinnati, New Orleans & Texas Pacific Ry. Co.
- The Cincinnati Northern R. R. Co.
- The Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.
- The Colorado & Southern Ry. Co.
- Columbus & Greenville R. R. Co. and A. T. Stovall, receiver.
- The Cumberland Valley & Martinsburg R. R. Co.
- The Delaware & Hudson Co.
- The Delaware, Lackawanna & Western R. R. Co.
- The Denver & Rio Grande Western R. R. Co. and Joseph H. Young, receiver.
- The Denver & Salt Lake R. R. Co. and W. R. Freeman and C. Boettcher, receivers.
- Detroit & Mackinac Ry. Co.
- Detroit & Toledo Shore Line R. R. Co.
- Detroit, Grand Haven & Milwaukee Ry. Co.
- Detroit, Toledo & Ironton R. R. Co.
- The Duluth & Iron Range R. R. Co.
- Duluth, Missabe & Northern Ry. Co.
- The Duluth, South Shore & Atlantic Ry. Co.
- Duluth, Winnipeg & Pacific Ry. Co.
- 97 El Paso & Southwestern Co.
- Erie R. R. Co.
- Florida East Coast Ry. Co.
- Fort Smith & Western R. R. Co. and Charles T. O'Neil, receiver.
- The Fort Worth & Denver City Ry. Co.
- Fort Worth & Rio Grande Ry. Co.
- The Galveston, Harrisburg & San Antonio Ry. Co.
- Georgia & Florida Ry. and John Skelton Williams, receiver.
- Georgia R. R.
- Georgia Southern & Florida Ry. Co.
- Grand Rapids & Indiana Ry. Co.
- Grand Trunk Western Ry. Co.
- The Great Northern Ry. Co.
- Green Bay & Western R. R. Co.
- Gulf & Ship Island R. R. Co.
- Gulf, Colorado & Santa Fe Ry. Co.
- Gulf, Mobile & Northern R. R. Co.
- The Hocking Valley Ry. Co.
- Houston & Texas Central R. R. Co.
- The Houston East & West Texas Ry. Co.
- Illinois Central R. R. Co.
- International & Great Northern Ry. Co. and James A. Baker, receiver.
- The Kanawha & Michigan Ry. Co.
- The Kansas City Southern Ry. Co.
- Kansas, Oklahoma & Gulf Ry. Co.
- The Lake Erie & Western R. R. Co.

Lake Superior & Ishpeming Ry. Co.
 The Lehigh & Hudson River Ry. Co.
 Lehigh Valley R. R. Co.
 The Long Island R. R. Co.
 Los Angeles & Salt Lake R. R. Co.
 Louisiana & Arkansas Ry. Co.
 Louisiana Ry. & Navigation Co.
 Louisiana Western R. R. Co.
 Louisville & Nashville R. R. Co.
 Louisville, Henderson & St. Louis Ry. Co.
 Maine Central R. R. Co.
 Maryland, Delaware & Virginia Ry. Co.
 The Michigan Central R. R. Co.
 Midland Valley R. R. Co.
 The Minneapolis & St. Louis R. R. Co.
 Minneapolis, St. Paul & Sault Ste. Marie Ry. Co.
 98 Mississippi Central R. R. Co.
 Missouri, Kansas & Texas Ry. Co. and C. E. Schaff,
 receiver.
 The Missouri, Kansas & Texas Ry. Co. of Texas.
 Missouri Pacific R. R. Co.
 Mobile & Ohio R. R. Co.
 The Monongahela Ry. Co.
 Montour R. R. Co.
 Morgan's Louisiana & Texas R. R. & S. S. Co.
 The Nashville, Chattanooga & St. Louis Ry.
 New Jersey and New York R. R. Co.
 New Orleans & Northeastern R. R. Co.
 New Orleans Great Northern R. R. Co.
 New Orleans, Texas & Mexico Ry. Co.
 The New York Central R. R. Co.
 The New York, Chicago & St. Louis R. R. Co.
 New York Connecting R. R. Co.
 The New York, New Haven & Hartford R. R. Co.
 New York, Ontario & Western Ry. Co.
 New York, Susquehanna & Western R. R. Co.
 Norfolk & Western Ry. Co.
 Norfolk Southern R. R. Co.
 Northern Alabama Ry. Co.
 Northern Pacific Ry. Co.
 Northwestern Pacific R. R. Co.
 Oregon Short Line R. R. Co.
 Oregon-Washington R. R. & Navigation Co.
 Panhandle & Santa Fe Ry. Co.
 The Pennsylvania R. R. Co.
 Pere Marquette Ry. Co.
 Perkiomen R. R. Co.
 Philadelphia & Reading Ry. Co.
 The Pittsburgh & Lake Erie R. R. Co.

- The Pittsburgh & Shawmut R. R. Co.
 - The Pittsburgh & West Virginia Ry. Co.
 - The Pittsburgh, Cincinnati, Chicago & St. Louis R. R. Co.
 - The Pittsburg, Shawmut & Northern R. R. Co. and Henry S. Hastings, receiver.
 - The Port Reading R. R. Co.
 - Quincy, Omaha & Kansas City R. R. Co.
 - Richmond, Fredericksburg & Potomac R. R. Co.
 - Rutland R. R. Co.
 - The St. Joseph & Grand Island Ry. Co.
 - The St. Louis, Brownsville & Mexico Ry. Co.
 - St. Louis-San Francisco Ry. Co.
 - St. Louis, San Francisco & Texas Ry. Co.
 - 99 St. Louis Southwestern Ry. Co.
 - St. Louis Southwestern Ry. Co. of Texas.
 - San Antonio & Arkansas Pass Ry. Co.
 - Seaboard Air Line Ry. Co.
 - Southern Ry. Co.
 - Southern Pacific Co.
 - Spokane International Ry. Co.
 - Spokane, Portland & Seattle Ry. Co.
 - The Staten Island Rapid Transit Ry. Co.
 - Tennessee Central Ry. Co.
 - Texarkana & Fort Smith Ry. Co.
 - Texas & New Orleans R. R. Co.
 - The Texas & Pacific Ry. Co. and J. L. Lancaster and C. L. Wallace, receivers.
 - The Toledo & Ohio Central Ry. Co.
 - Toledo, Peoria & Western Ry. Co. and S. M. Russell, receiver.
 - Toledo, St. Louis & Western R. R. Co. and W. L. Ross, receiver.
 - The Trinity & Brazos Valley Ry. Co. and John A. Hulen, receiver.
 - Union Pacific R. R. Co.
 - Vicksburg, Shreveport & Pacific Ry. Co.
 - The Virginia Ry. Co.
 - Wabash Ry. Co.
 - West Jersey & Seashore R. R. Co.
 - Western Maryland Ry. Co.
 - The Western Pacific R. R. Co.
 - The Western Ry. of Alabama.
 - The Wheeling & Lake Erie Ry. Co.
 - The Wichita Falls & Northwestern Ry. and C. E. Schaff, receiver.
 - Wichita Valley R. R. Co.
 - The Yazoo & Mississippi Valley R. R. Co.
- It is further ordered, That the issuance and use of said interchangeable scrip coupon ticket shall be governed by the rules and regulations set out in Appendix D to said supplemental report.
- It is further ordered, That the respondents hereinafter named be, and they are hereby, exempted from the provisions of the said

amendatory act as to the branches and parts of lines named and described, viz:

100 The Virginian Railway Company: Maine line west of Roanoke, Va.; all branch lines in West Virginia.

Florida East Coast Railway Company: Key West extension south of Homestead, Fla.

Boston & Maine Railroad: Orchard Beach branch, extending from Old Orchard to Camp Ellis, Me., a distance of 3.8 miles; branch from Fabyan to Mount Washington, N. H., a distance of 6.7 miles; Bethlehem branch, extending from Bethlehem Junction to Bethlehem, N. H., a distance of 3.4 miles.

Mobile & Ohio Railroad Company: Okolona branch of the Southern Railway Company (operated by the Mobile & Ohio), extending from Okolona to Calhoun City, Miss., 37.7 miles.

It is further ordered, That all respondent common carriers by rail not hereinbefore named and described be, and they are hereby, exempted from the provisions of the aforesaid amendatory act.

And it is further ordered, That this order shall continue in force until the further order of the commission.

By the commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

101 TRANSCRIPT OF RECORD OF DISTRICT COURT.

UNITED STATES OF AMERICA,
District of Massachusetts, ss.:

At a District Court of the United States within and for the District of Massachusetts, begun and holden at Boston, on the third Tuesday of March, being the twentieth day of March, in the year of our Lord one thousand nine hundred and twenty three.

Before The Honorable James M. Morton, jr., district judge.

[Title omitted.]

The petition in this cause is filed in the clerk's office on the thirtieth day of March, A. D. 1923, and is duly entered at the present March term of this court, A. D. 1923, and is in the words and figures following:

102 In United States District Court.

Petition.

Filed March 30, 1923.

(MEMORANDUM.—The petition, as printed in this Transcript of Record, beginning on page 3, is here inserted. James S. Allen, clerk.)

On the tenth day of April, A. D. 1923, the following motion for leave to file petition to intervene is filed by the National Council of Travelling Salesmen's Association:

In United States District Court.

Motion for leave to file petition to intervene.

Filed April 10, 1923.

To the Honorable the Judges of the District Court of the United States for the District of Massachusetts:

Now come the National Council of Traveling Salesmen's Associations, an unincorporated association of more than seven members, and Aaron M. Loeb, as president; Samuel H. Liberman, as first vice president; Leon S. Fox, as second vice president; Selden A. McOmber, as third vice president; George W. Allen, as fourth vice president; Sol Wolerstein, as secretary; and Archie E. Foise, as treasurer thereof; and Garment Salesmen's Association, Inc., by Powers & Hall, Samuel Blumberg, and Hoke Smith, their solicitors, and move the court for leave to file herein their intervening petition herewith submitted for the reason that they were and are interested in the controversy and question before the Interstate Commerce Commission to which this suit refers, and in the subject matter of this suit, as in said intervening petition more particularly set out and specified.

By POWERS & HALL,
JAMES N. CLARK,
SAMUEL BLUMBERG,
HOKE SMITH,

*Solicitors for National Council of Traveling
Salesmen's Associations et al., Interventors.*

On the same day, the foregoing motion is allowed by the court, the Honorable George F. Morris, district judge for the District of New Hampshire, duly assigned to hold said District Court, sitting, and the following petition to intervene is filed:

103

In United States District Court.

*Petition of the National Council of Traveling Salesmen's Association
to Intervene et al.*

Filed April 10, 1923.

*To the Honorable Judges of the District Court of the United States
for the District of Massachusetts:*

The petition to intervene of the National Council of Traveling Salesmen's Associations, an unincorporated association, and of Aaron M. Loeb, as president; Samuel H. Liberman, as first vice president;

Leon S. Fox, as second vice president; George W. Allen, as fourth vice president; Sol Wolerstein, as secretary; Archie E. Foise, as treasurer thereof; and the Garment Salesmen's Association, Inc., respectfully show:

1. This petition to intervene is made under the provisions of the interstate commerce act and an act of October 22nd, 1913, entitled "An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1913 and for other purposes," and under the Judicial Code, and more particularly section 212 thereof, and likewise under all other statutory provisions applicable thereto and the general equity jurisdiction of this court.

2. Your petitioner, National Council of Traveling Salesmen's Associations, is an unincorporated association of more than seven members, with its principal office in the city, county, and State of New York, comprising the following constituent bodies:

Associated Traveling Salesmen of New York, Inc.; Associated Chicago Salesmen; Associated Millinery Men, Inc.; Associated Millinery Traveling Salesmen, Incorporated; Boot & Shoe Travelers' Association of New York; Carpet & Upholstery Club of Chicago; Chicago Corset Salesmen's Club; Cincinnati Traveling Men's Association; Cleveland Garment Salesmen's Association; Commercial Travelers' Association of the Lace, Embroidery, and Allied Trades, Inc.; Eastern and Middle West Travelers' Association, Inc.; Empire State Corset Club; Far Western Travelers' Association, Inc.; Garment Salesmen's Association, Inc.; Jewelry, Leather, and Fancy Goods Salesmen's Association, Inc.; Men's Apparel Club of New Jersey; Men's Apparel Club of the State of New York, Inc.; Men's Apparel Club of Pennsylvania, Incorporated; Men's Apparel Club of Michigan; National Association of Knit Goods Selling Agents; National Piano Travelers' Association; New England Corset Club; Ohio Corset Club; Pennsylvania Corset Club; Salesmen's Association of the Paper Industry; Silk Travelers' Association, Inc.; Southern Jewelry Travelers' Association, Incorporated; Southern Travelers' Association, Inc.; Southern Shoe Salesmen's Association; Tobacco Salesmen's Association of America, Inc.; Upholstery Association of America, Inc.; and Wall-Paper Travelers' Association, all of which are members of said National Council in good standing.

Your petitioners, Aaron M. Loeb, Samuel H. Liberman, Leon S. Fox, Selden A. McOmber, George W. Allen, Sol Wolerstein, and Archie E. Foise are the president, first vice president, second vice president, third vice president, fourth vice president, secretary, and treasurer, respectively, of your said petitioner, National Council of Traveling Salesmen's Associations.

Your petitioner, Garment Salesmen's Association, Inc., is a corporation of the State of New York, and is one of the members above named of your said petitioner, National Council of Traveling Salesmen's Associations.

Your petitioner file this petition to intervene both for themselves and for and as representing the afore-mentioned constituent bodies and members of your said petitioner, National Council of Traveling Salesmen's Associations.

3. Section 22 of the interstate commerce act was amended by an act of Congress of August 18th, 1922, so as to add two (2) paragraphs to the said section, so that said section thereafter and now reads as set forth in "Exhibit A" of the petition of the carriers herein heretofore filed, which said "Exhibit A" is made a part hereof as if set forth at length. Pursuant to the provisions of said section as so amended the said commission on August 23rd, 1922, made an order for an investigation, a copy of which said order is set forth in "Exhibit B" of the said petition of the carriers herein, which said "Exhibit B" is made a part hereof, as if set forth at length. Thereafter hearings were had before the said commission on September 26th and 27th and on November 15th, 1922, and thereafter, to wit, on January 26th, 1923, the said commission made its report and opinion, a copy of which, together with a copy of the dissenting opinions, is set forth in "Exhibit C" in the said petition of the carriers herein, which said "Exhibit C" is made part hereof as if set forth at length. On March 6th, 1923, the commission issued a further report and order, a copy of which is set forth in "Exhibit D" of the said petition of the carriers herein, which said "Exhibit D" is made part hereof as if set forth at length.

105 4. Your said petitioner, National Council of Traveling Salesmen's Associations, has always been one of the principal proponents of such legislation as hereinabove referred to, and of the purposes sought to be brought about by the said order of the Interstate Commerce Commission in pursuance thereof, hereinabove referred to. Your said petitioner on its own behalf, and that of its constituent bodies and of other associations, persons, firms, and corporations similarly situated, by its attorneys and solicitors, Samuel Blumberg and Hoke Smith, appeared at all hearings before committees of Congress, held for the purpose of adducing testimony in regard thereto, and consideration of, the said legislation theretofore proposed, and at all hearings of the Interstate Commerce Commission, held as above recited, did likewise appear, as shown by the appearances noted in the said report and opinion of the Interstate Commerce Commission aforementioned, and produced witnesses, introduced evidence, and made argument as to the said legislation and the action to be taken by the Interstate Commerce Commission in pursuance thereof, and at the said hearings and all of them before the Interstate Commerce Commission your petitioner's said attorneys and solicitors, Samuel Blumberg and Hoke Smith, conducted the said hearings, not only in behalf of your said petitioner, but also in behalf of all other parties appearing at the said hearings in favor of the issuance of an interchangeable scrip coupon ticket at reduced rates, and said Samuel Blumberg and Hoke Smith, in said

capacity, conducted the said hearings in their entirety in that behalf, and were the only attorneys and solicitors so conducting said hearings.

5. Your said petitioner, both on its own behalf and that of its constituent bodies and of other associations, persons, firms, and corporations similarly situated, has for years been an interested and active proponent of such reduction in rates in connection with the issuance of interchangeable mileage or scrip coupon books under such conditions as should be just and reasonable. The said constituent bodies comprising the membership of your said petitioner, and, through them, your said petitioner are composed of thousands of citizens of the United States, engaged in the occupation of market-

106 ing merchandise in all parts of the United States, and in so doing traveling to said parts of the United States on the roads of the carriers of this country, said citizens being commonly known as commercial travelers. In so marketing merchandise, and in so traveling for that purpose, said commercial travelers, members of your petitioner's constituent bodies, as aforementioned, as well as all other commercial travelers of the United States, not such members, in whose welfare and protection, as well, your said petitioner is interested, travel thousands of miles a year over the roads of the carriers of this country, and in particular of the carriers of the eastern group, petitioners in this action. Said commercial travelers have in the past, when mileage and scrip coupon books were issued, purchased carriage in large amounts under said books, and would in the future again purchase carriage in large amounts under the scrip coupon ticket ordered by the Interstate Commerce Commission. Their occupation and interests, in order that they may perform the duties of their said occupation to the fullest extent, and in order that they may market the merchandise of the country on a broad and complete scale, as same should be marketed, and in order that they may lay the commodities of the country before its consumers, and afford said consumers the opportunities of choice and purchase of said commodities to an extent which shall be proper and to the advantage of the industries, consumers, carriers, and general public of the country alike, require a reasonable and just reduction in the rate of travel, as ordered by the Interstate Commerce Commission, under the conditions by it prescribed.

6. Your petitioner, Garment Salesmen's Association, Inc., at all times authorized your petitioner, National Council of traveling Salesmen's Associations, to appear for it and to represent it before the various committees of Congress and at the hearings of the Interstate Commerce Commission as above recited, and by its membership in and through said National Council appeared, was present, and represented at all said committee meetings and hearings as above set forth. That the members of your petitioner, Garment Salesmen's Association, Inc., are commercial travelers whose interests are the same with those of the commercial travelers heretofore mentioned herein, of whom they form a part.

107 7. Your said petitioner, National Council of Traveling Salesmen's Associations, and your other said petitioners as officers thereof, and your said petitioner, Garment Salesmen's Association (Inc.), thus are and were interested in the controversy and question before the Interstate Commerce Commission to which this suit refers, and are interested in the above-entitled cause.

8. Your petitioners herein deny that the order of the Interstate Commerce Commission is not supported by its findings of fact, and that the statement of the findings of the commission as set forth in the said petition of the carriers herein represents a complete, fair, and correct statement of said findings; they deny that the said order prescribes a different charge for the same service under substantially similar circumstances and conditions, that there are not circumstances and conditions justifying the said order, that an undue preference would be established by compliance with said order, and that there can not be a just and reasonable rate for holders of the scrip coupon ticket prescribed less than the rate for other passengers; they deny that travel will not be sufficiently stimulated to overcome or at least equal any decrease there might otherwise be in the revenue of the carriers, and that the carriers will suffer such losses as estimated by them in their petition or any losses whatever, that the said order of the commission is based on a mistaken view of the said amendment to section 22 of the interstate commerce act, that the said order tends to speculate with the carriers' property, that arbitrary exemptions have been made, and that the said order is not restricted to and concerned wholly with interstate commerce; or that in any manner the said order or the said amendment to section 22 of the interstate commerce act establishes a rate which is not just and reasonable, which is noncompensatory, or which is less than required by the interstate commerce act, deprives the carriers of their property without due process of law, or unduly limits their liberty of contract; they deny, further, that the said legislation or the said order of the Interstate Commerce Commission in pursuance thereof in any manner whatsoever violate the interstate commerce act or the Constitution of the United States, or are in any way void or unlawful, as well as each and all the facts and conclusions set forth in said petition of the carriers herein upon which could be predicated the alleged assertions, or any of them, contained in said petition of said violation of the interstate commerce act and of the Constitution of the United States and of the unlawfulness of the said legislation and order.

108 8. There was sufficient evidence to justify the commission in finding that the rate prescribed by its said order is just and reasonable, and the said rate under the conditions provided is entirely warranted by the facts and by the findings of the commission. The ordering of the said scrip coupon ticket at the said rate is not based upon an improper classification of traffic. The public interest renders the said order a proper and reasonable regulation of interstate commerce and

of public utilities, such as are the carriers petitioning here. Compliance with the said order will result in a great stimulation of traffic, both passenger and freight, which will not only equal any direct loss to the carriers through the reduction of fare, but will bring increased revenues to the said carriers above those they are now earning and will generally benefit all producers and consumers of the country.

Wherefore your petitioners pray that they may be allowed to intervene and become parties defendant to this suit and that they be given leave as such to interpose an answer herein within the time prescribed by law and take any and all other proceedings herein in the same manner and to the same extent as if originally defendants herein, to oppose the making of an interlocutory or a permanent injunction, or both, as sought in the petition of the carriers herein, and for such other and further relief in the premises as the nature and circumstances of the case may require and as to your honors may seem equitable and just.

109 NATIONAL COUNCIL OF TRAVELING SALESMEN'S ASSOCIATIONS, an unincorporated association, and Aaron M. Loeb, as president; Samuel H. Liberman, as first vice president; Leon S. Fox, as second vice president; Selden A. McOmber, as third vice president; George W. Allen, as fourth vice president; Sol Wolerstein, as secretary; and Archie E. Foise, as treasurer thereof; and

GARMENT SALESMEN'S ASSOCIATION, INC., *Intervenors*,
By POWERS & HALL,
JAMES N. CLARK,
SAMUEL BLUMBERG,
HOKE SMITH,
Solicitors for Petitioners.

STATE OF NEW YORK,
City of New York,
County of New York, ss:

Sol Wolerstein, being duly sworn, deposes and says that he is one of the petitioners and intervenors herein, is the secretary of the National Council of Traveling Salesmen's Associations, and is the president of the Garment Salesmen's Association, Inc., others of the petitioners and intervenors herein; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

SOL WOLERSTEIN.

Sworn to, before me this 9th day of April, 1923.

[SEAL.]

ARTHUR M. LOEB,
Notary Public.

New York County clerk's No. 192; New York County register's No. 4031. Commission expires March 30, 1923.

Also on the same day the following order granting leave to intervene to National Council of Traveling Salesmen's Associations et al is entered:

Order granting leave to intervene.

April 10, 1923.

MORRIS, J.: On presentation of the motion of the National Council of Traveling Salesmen's Associations, an unincorporated association, and Aaron M. Loeb, as president; Samuel H. Liberman, as first vice president; Leon S. Fox, as second vice president; Selden A. McOmber, as third vice president; George W. Allen, as fourth vice president; Sol Wolerstein, as secretary; and Archie E. Foise, as treasurer thereof; and Garment Salesmen's Association, Inc., for leave to file a petition to intervene and for the relief therein sought, it appearing to the court that said petitioners were and are interested in the controversy and question before the Interstate Commerce Commission, to which this suit refers, and in the subject matter of this suit, sufficiently to entitle them to become parties to this suit; it is hereby

Ordered, adjudged, and decreed that the National Council of Traveling Salesmen's Associations, an unincorporated association, and Aaron M. Loeb, as president; Samuel H. Liberman, as first vice president; Leon S. Fox, as second vice president; Selden A. McOmber, as third vice president; George W. Allen, as fourth vice president; Sol Wolerstein, as secretary; and Archie E. Foise, as treasurer thereof; and Garment Salesmen's Association, Inc., have leave to file their said petition to intervene and to intervene and become parties defendant to this suit, and as such to interpose an answer herein within the time prescribed by law, and take any and all other proceedings in the same manner and to the same extent as if originally defendants herein, to oppose the making of an inerlocutory or a permanent injunction or both, as sought in the petition of the carriers herein, and it is further

111 Ordered that this order, together with the motion for leave to file petition to intervene and the said petition to intervene, be served upon Charles F. Choate, jr., the solicitor for the petitioners in said suit, and upon the Attorney General of the United States, by mailing a copy of said papers to each of said persons forthwith.

By the Court:

ARTHUR M. BROWN, *Deputy Clerk.*

In United States District Court.

On the twelfth day of said April, A. D. 1923, the following motion of the United States to dismiss the petition is filed:

Motion of the United States to dismiss the petition.

Filed April 12, 1923.

United States of America, respondent, by its counsel, now comes and moves the court to dismiss the petition in the above-entitled cause at the cost of the petitioners.

As grounds for this motion it is shown:

1. The petition, with the exhibits attached thereto and made a part thereof, is without equity on its face and does not state any cause of action against the respondent, and the court may not grant the relief prayed or any part of the same.

2. It appears from the petition and the exhibits attached thereto and made a part thereof that the order of the Interstate Commerce Commission sought to be enjoined, set aside, annulled, or suspended was authorized by the act to regulate commerce as amended and the transportation act, 1920, and that it was regularly made and entered by the commission after a full hearing.

Wherefore, and for divers other good causes appearing on the face of the petition, more fully to be pointed out on the hearing hereof, respondent prays that its motion be sustained, and for such other and further order or action as may be appropriate.

BLACKBURN ESTERLINE,

Assistant to the Solicitor General.

ROBERT O. HARRIS,

United States Attorney, District of Massachusetts.

On the twelfth day of April, A. D. 1923, the following affidavits of Julius H. Parmelee are filed:

In United States District Court.

Affidavit of Julius H. Parmelee.

Filed April 12, 1923.

UNITED STATES OF AMERICA,

District of Columbia, City of Washington, ss:

Before me, the undersigned authority, on this date personally appeared Julius H. Parmelee, who, being first duly sworn, deposes and says upon his oath as follows:

I am at present the director of the Bureau of Railway Economics, an organization supported by many of the principal railway com-

panies of the United States, for the purpose of compiling and studying railroad statistics. I have been connected with this bureau for about twelve years, and was for about two years prior to my association with the Bureau of Railway Economics a special examiner for the Interstate Commerce Commission, and in that connection my duties led me to deal exclusively with railway accounts and railway statistics.

In *Increased Rates*, 1920 (58 I. C. C. 229), the Interstate Commerce Commission found that "the value of steam-railway property of the carriers subject to the act, held for and used in the service of transportation" in the Eastern group, as defined in the commission's report in that proceeding, was \$8,800,000,000. This finding of value by the Interstate Commerce Commission included the carrier property of all of the railroads in the Eastern group reporting to the commission, including not only what is known as Class I railways, being those carriers with annual operating revenues in excess of \$1,000,000, but also other railways in that group.

Neither the Interstate Commerce Commission nor the Bureau of Railway Economics normally compile summaries, except for railways of Class I, as defined above, because in a study of the statistics of all carriers for the years 1915 and 1916 it was found that the net railway operating income of Class I roads in the Eastern group represented 98.39 per cent of the total for all carriers in that group, and the number of carriers other than Class I roads reporting to the commission is so great that neither the commission nor the Bureau of Railway Economics has deemed it profitable to compile complete statistics concerning these secondary roads. The consequence is that the net railway operating income of all of the carriers in the Eastern group for recent years has not been made available by compilation of the reports made by all of these individual carriers, but the Interstate Commerce Commission's monthly summary of "Operating revenues and operating expenses of Class I steam roads in the United States" as published for December, 1922, shows the earnings and expenses of Class I railways in the Eastern group for the calendar year 1922 as follows:

12 months—Jan. 1 to Dec. 31, 1922.

Account.	Total Eastern district.	Pocahontas region.	Total Eastern group (Eastern district plus Pocahontas).
1. Railway operating revenues.....	\$2,556,098,153	\$203,811,561	\$2,759,909,714
2. Railway operating expenses.....	2,088,204,462	153,769,529	2,241,973,991
3. Net rev. from ry. operations.....	467,893,691	50,042,032	517,935,722
4. Ry. tax accruals.....	117,423,203	11,462,607	128,885,810
5. Uncollectible ry. rev.....	545,692	21,139	566,831
6. Ry. operating income.....	349,924,796	38,558,281	388,483,077
115 7. Equip. rents—Net balance.... Dr..	39,073,135 Cr.	3,339,836 Dr.	35,733,299
8. Jt. fac. rents—Net balance.... Dr..	9,054,410 Dr.	946,132 Dr.	10,000,542
9. Net ry. operating income.....	301,797,251	40,951,990	342,749,241

The Eastern district and the Pocahontas region constitute the Eastern group as defined by the commission in Increased Rates, 1920, above referred to.

Item 9 above is the net railway operating income as defined in paragraph 1 of section 15a of the transportation act.

In addition to the finding by the Interstate Commerce Commission of the valuation of carrier property in the Eastern group its memorandum of October 23, 1922, pages 3 and 4, states that the net additions to Class I carrier property in the Eastern group made during 1920 amounted to \$243,341,161 and during 1921 amounted to \$175,576,789, thus giving an estimated value of all steam roads in the Eastern group on January 1, 1922, as not less than \$9,218,917,950.

Equating the net earnings of Class I roads by the formula previously described, using 98.39 per cent of the total as representing the earnings of Class I roads, we find that the total net railway operating income for all roads in the Eastern group for the calendar year 1922 was \$348,357,802. This gives a rate of return of 3.78 per cent upon a property valuation, as above set forth, of \$9,218,917,950.

The statistics set out above, including the valuation found by the commission, the net railway operating income, and the rate of return for the calendar year 1922 may be summarized as follows:

12 months—Jan. 1 to Dec. 31, 1922.

Tentative valuation.....	\$9, 218, 917, 950
Net railway operating income.....	348, 357, 802
Rate earned on tentative valuation—annual basis.....	3. 78%

116 While the railroads of the United States do not concur except perhaps in a few instances in the valuation of carrier property stated by the Interstate Commerce Commission in the report which it made in the proceeding above referred to (58 I. C. C. 229), and while the principal railways of the United States contend that the valuation of their property is substantially larger than that stated by the commission in this report, nevertheless, for purposes of conservative statement, I have regarded it as proper in this connection to use the figures arrived at and found by the Interstate Commerce Commission, because the book value of the railroads of the United States and the book value of the roads in the eastern group is considerably in excess of the findings so made by the commission, and would, therefore, indicate, if used, a smaller rate of return than that which is arrived at by using the figures of the commission.

So far as the revenue and expense account of the carriers are concerned for the twelve months above referred to, they are not only compiled by the Interstate Commerce Commission but are also compiled by the Bureau of Railway Economics from duplicate reports sent to it, and therefore scrutinized under my supervision by the Bureau of Railway Economics, and it is therefore my opinion that the revenue, expense, and income account of the Class I roads in the eastern group, given above, is correct.

It is obvious that the results stated above of the study of the net income of Class I roads, as compared with the net income of all roads for the years 1915 and 1916, would probably not be precisely accurate in any other year or years, but it is my opinion, and I assume from the fact that the Interstate Commerce Commission does not compile complete statistics for all roads, that it must also be of the opinion that the result arrived at by using this equation figure of 98.39 per cent is substantially correct, and that in figuring the net rate of return, as I have given it above, any error which might exist would be so small as to be entirely negligible for practical purposes.

Based upon the studies which I have made of railway earnings in the eastern group for the calendar year 1922, it is my opinion that the net railway operating income of all steam railroads
 117 in the eastern group, as defined by the Interstate Commerce Commission in its aforesaid report, was not in excess of 3.78 per cent upon the valuation of their property held for and used in the service of transportation during the calendar year 1922.

And further deponent saith not.

JULIUS H. PARMELEE.

Sworn to before me and subscribed in my presence this thirtieth day of March, 1923.

MARY A. SHILTON,

Notary Public in and for District of Columbia.

My commission expires May 9, 1924.

In United States District Court.

Second affidavit of Julius H. Parmelee.

Filed April 12, 1923.

UNITED STATES OF AMERICA,

District of Columbia, City of Washington, ss:

Before me, the undersigned authority, on this date personally appeared Julius H. Parmelee, who, being first duly sworn, deposes and says upon his oath as follows:

I am at present the director of the Bureau of Railway Economics, an organization supported by many of the principal railway companies of the United States for the purpose of compiling and studying railroad statistics. I have been connected with this bureau for about twelve years, and was for about two years *and was for about two years* prior to my association with the Bureau of Railway Economics a special examiner for the Interstate Commerce Commission, and in that connection my duties led me to deal exclusively with railway accounts and railway statistics.

Number of reporting carriers.

The Interstate Commerce Commission in its "Thirty-fourth Annual Report on the Statistics of Railways in the United States for the year ended December 31, 1920," page IX and X, show the number of common carriers engaged in interstate commerce which regularly file operating reports with that commission as follows: Number Dec. 31, 1920:

118 Class of carrier:

Operating companies that file reports—

Class I.....	186
Class II.....	303
Class III.....	383
Switching and terminal companies.....	301

Total 1,173

Class I railways are carriers with annual operating revenues in excess of \$1,000,000.

Class II railways are carriers with annual operating revenues from \$100,000 to \$1,000,000.

Class III railways are carriers with annual operating revenues below \$100,000.

Switching and terminal companies are operating corporations engaged in switching or terminal service.

Passenger revenues in 1922.

According to a compilation prepared and checked under my direction, based upon the sworn reports of the railways to the Interstate Commerce Commission, the Class I railways in the Eastern group, during the calendar year ended December 31, 1922, earned an aggregate passenger revenue amounting to \$539,493,816.

According to a similar compilation, based upon the sworn reports to the Interstate Commerce Commission of the petitioning carriers set out on page 3 of petition filed in equity, District Court of the United States for the District of Massachusetts, entitled "The New York Central Railroad Company et al., petitioners, against The United States of America, respondents," filed March 30, 1923, those petitioning carriers, during the calendar year ended December 31, 1922, earned an aggregate passenger revenue of \$476,039,465. This amount of \$476,039,465 is 88.24 per cent of the total passenger revenue of all Class I railways in the Eastern group, as set forth above.

The Eastern group comprises the Eastern district and the Pochontas region as designated by the Interstate Commerce Commission in Reduced Rates, 1922 (68 I. C. C.).

119 And further deponent saith not. JULIUS H. PARMELEE.

Sworn to and subscribed before me, this 7th day of April, 1923.

SAMUEL FILAND,
Notary Public in and for the District of Columbia.

Also on the same day the following answers are filed :

Answer of Interstate Commerce Commission.

Filed April 12, 1923.

The Interstate Commerce Commission, intervening respondent in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' petition contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

Answering Paragraphs I to VII, inclusive, of the petition, said intervening respondent, Interstate Commerce Commission,
121 hereinafter called the commission, admits, for the purposes of this suit, that the allegations contained in said paragraphs are true.

Answering Paragraph VIII of the petition, the commission admits that the allegations contained therein are substantially correct. In this connection, however, the commission alleges that the carriers who are required by its order of March 6, 1923, to issue and sell the ticket mentioned are shown in and by said order, to which the court is referred for more full and complete information in the premises.

Answering Paragraphs IX to XXIII, inclusive, of the petition, the commission admits and alleges that it made and entered the supplemental report and the order, dated March 6, 1923, referred to in said paragraphs, copies of which are included in Exhibit D to the petition, and the report of January 26, 1923, referred to in Paragraph VI of the petition, a copy of which is Exhibit C to the petition, in a proceeding then pending before it, for the purpose of complying with the requirements of section 22 of the interstate commerce act, paragraph (2) of which reads as follows:

"The commission is directed to require, after notice and hearing, each carrier by rail, subject to this act, to issue at such offices as may be prescribed by the commission interchangeable mileage or
122 scrip coupon tickets at just and reasonable rates, good for passenger carriage upon the passenger trains of all carriers by rail subject to this act. The commission may in its discretion exempt from the provisions of this amendatory act either in whole or in part any carrier where the particular circumstances shown to the commission shall justify such exemption to be made. Such tickets may be required to be issued in such denominations as the commission may prescribe. Before making any order requiring the issuance of any such tickets the commission shall make and publish such reasonable rules and regulations for their issuance and use as

in its judgment the public interest demands; and especially it shall prescribe whether such tickets are transferable or nontransferable, and if the latter, what identification may be required; and especially also to what baggage privileges the lawful holders of such tickets are entitled."

The commission further alleges that said proceeding was instituted by it upon its own motion, under the authority conferred upon it by paragraph (2) of section 13 of said act, by its order dated August 23, 1922, a copy of which is Exhibit B to the petition.

The commission further alleges that said order of August 23 was duly served upon the respondents herein; that subsequent to 123 such service the commission accorded to the parties to said proceeding the full hearings provided for in section 15 of said act; that at said hearings a large volume of testimony and other evidence bearing upon the matters covered by said order of August 23 was submitted to the commission for consideration, on behalf of said parties, by their respective counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the commission for determination, on behalf of said parties by their counsel, whereupon the commission determined said matters and made and entered and served upon respondents herein said report of January 26 and said supplemental report and order of March 6, which included the commission's decision, conclusions, order, and requirements in the premises; that upon the evidence aforesaid, and as shown in and by said report of January 26 and said supplemental report and order of March 6, the commission made the findings, stated the conclusions, and prescribed the rules and regulations upon which said order of March 6 is based. In this connection, among other things, the commission said:

"We find and conclude that on and after March 15, 1923, carriers by rail, respondents herein, enumerated in Appendix C, shall establish, issue, and maintain, at such offices as we may hereafter 124 designate, a nontransferable interchangeable scrip coupon ticket in the denomination of \$90, which shall be sold at a reduction of 20 per cent from the face value of the ticket. We further find that the rates resulting from that reduction will be just and reasonable for this class of travel. This scrip coupon ticket shall be good, within one year from the date of its sale, for carriage of passengers on all passenger trains operated by said respondents, except that in the case of special or extra-fare trains its use will be subject to the payment by the passenger of the special or extra fare. Respondents shall keep a record of the use of the tickets during the first 12-month period, which should reflect its effect on passenger revenues, the number of scrip tickets sold, and the gross revenue derived from their sale. Parties other than carriers primarily interested in this experiment should likewise record their experience with this ticket in order that the actual results of the experiment may

be ascertained to the fullest extent possible. Any party to this proceeding may bring the matter to our attention for further consideration on or about January 1, 1924, with such statements as they choose to make concerning the operation and effect of the scrip tickets."

The commission further alleges that said findings, conclusions, and rules and regulations were and are, and that each of them was
125 and is, fully supported and justified by the evidence submitted to the commission in said proceeding as aforesaid.

The commission further alleges that, in making said report of January 26 and said supplemental report and order of March 6, it considered and weighed carefully, in the light of its own knowledge and experience, every fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including all matters covered by the allegations of the petition herein, particularly the allegations contained in Paragraphs IX to XXIII, inclusive, of said petition.

The commission further alleges that the rate at which the carriers named in said order of March 6 are required to establish, issue, maintain, and keep in force, the nontransferable interchangeable scrip coupon ticket referred to in said order, will furnish to the carriers covered by the order, including the petitioner herein, full, reasonable, fair, and just compensation for services to be performed by them and included in said rate, and denies each of and all the allegations to the contrary contained in said petition.

The commission further alleges that said order of March 6 was not made or entered either arbitrarily, or unjustly, or contrary to
126 the relevant evidence, or without evidence to support it; that in making said order it did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the commission denies each of and all the allegations to the contrary contained in said petition.

Except as herein expressly admitted, the commission denies the truth of each of and all the allegations contained in said petition, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report of January 26, or supplemental report and order of March 6, which are hereby referred to and made a part hereof.

All of which matters and things this respondent is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said petition be dismissed.

INTERSTATE COMMERCE COMMISSION,
By P. J. FARRELL, *Chief Counsel*.

127 CITY OF WASHINGTON,
District of Columbia, ss:

Balthasar H. Meyer, being duly sworn, deposes and says that he is a member and chairman of the Interstate Commerce Commission, the above-named intervening respondent, and makes this affi-

davit on behalf of said commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true.

BALTHASAR H. MEYER,

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia, this —— day of April, 1923.

[SEAL.]

ALFRED HOLMEAD, *Notary Public.*

128

In United States District Court.

Answer of National Council of Traveling Salesmen's Associations et al.

Filed April 12, 1923.

And now come the National Council of Traveling Salesmen's Associations et al., and the Garment Salesmen's Association (Inc.), intervening respondents in the above-entitled cause, and move
129 to dismiss the bill filed in this action because said bill does not state any matter of equity entitling the petitioners to the relief prayed for nor are the facts as stated sufficient to entitle petitioners to any relief against the respondent, the United States of America.

Intervening respondents, further answering the petition and particularly Paragraphs I to VII, inclusive, of said petition, admit for the purposes of this suit that the allegations therein contained are true.

Answering Paragraph VIII of the petition, intervening respondents admit that the allegations contained therein are substantially correct, but allege that the carriers who are required by said order of March 6th, 1923, to issue and sell the scrip coupon tickets mentioned are designated in and by said order, to which this court is referred for more complete information in the premises.

Answering Paragraphs IX to XXIII, inclusive, of the petition, intervening respondents admit and allege that the Interstate Commerce Commission made and entered a supplemental report and order dated March 6th, 1923, referred to in said paragraphs, copies whereof are included in Exhibit "D" annexed to the petition herein, and the report of January 26th, 1923, referred to in Paragraph VI of the petition herein, a copy whereof is Exhibit "C" annexed to the said petition, in a proceeding then before the Interstate Commerce Commission for the purpose of complying with the requirements of section 22 of the interstate commerce act, and in this connection, intervening respondents allege that the said proceeding
130 was instituted by the Interstate Commerce Commission upon its own motion pursuant to authority conferred upon it by paragraph 2 of section 13 of said act, by the order of the Interstate Commerce Commission, dated August 23rd, 1922, a copy whereof is Exhibit "B" annexed to the said petition.

Intervening respondents allege that the said order of August 23rd, 1922, was duly served upon the petitioners here; that subsequently thereto the commission accorded to the parties to said proceeding full hearings provided for in section 15 of said act; that at said hearings a large volume of testimony and other evidence bearing upon matters covered by said order of August 23rd, 1922, was submitted to the commission for its consideration on behalf of said parties and by their respective counsel; that at said hearings petitioners and intervening respondents herein submitted to the Interstate Commerce Commission for consideration, evidence bearing upon the matters covered by the order of August 23rd, 1922; that at said hearing and subsequently both orally, and in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Interstate Commerce Commission for its determination not only by the petitioners herein and their counsel but by the intervening respondents herein and others; that the Interstate Commerce Commission determined said matters and made, entered, and served upon the petitioners herein its report of January 26th, 1923, and its supplemental report and order of March 6th, 1923, which included the decisions of the Interstate Commerce Commission, its conclusions, its order, and its requirements in the premises; that upon the evidence aforesaid
 131 and as shown in and by its report of January 26th, 1923, and its supplemental report and order of March 6th, 1923, the Interstate Commerce Commission made its findings, stated its conclusions and made its rules and regulations upon which the order of March 6th, 1923, is based, all of which appears in the order of the Interstate Commerce Commission, referred to as Exhibits "C" and "D" in the petition of the petitioners herein.

The intervening respondents herein further allege that said findings, conclusions, rules, and regulations were and are, and each of them was and is fully supported and justified by the evidence submitted to the commission in its said proceeding as aforesaid, and in this connection further allege that in making its said report of January 26th, 1923, and its supplemental report and order of March 6th, 1923, the Interstate Commerce Commission considered and weighed carefully in the light of its own knowledge and experience every fact and circumstance necessary for a proper determination of the proceeding.

The intervening respondents deny that the decision of the Interstate Commerce Commission is not supported by its findings of fact, and that the findings of fact of the Interstate Commerce Commission, as set forth in the petition of the petitioners herein, represents a complete, fair, or correct statement of its findings.

The intervening respondents deny that the said decision prescribed a different charge for the same service under substantially similar circumstances and conditions, and deny that there are not circumstances and conditions justifying the said decision of the Interstate Com-

merce Commission, that an undue preference would be established by compliance therewith, and that there cannot be a just and reasonable rate for holders of the scrip coupon ticket prescribed, less than the rate for other passengers.

Intervening respondents further deny that travel will not be sufficiently stimulated to overcome or at least equal any decrease there might otherwise be in the revenue of the petitioners herein, and that the petitioners herein will suffer such losses as are estimated by them in their petition or any loss whatever.

Intervening respondents further deny that the said order of the Interstate Commerce Commission is based upon a mistaken view of the said amendment to section 22 of the interstate commerce act; that the order tends to speculate with the carrier's property, that arbitrary exemptions have been made and that the said order is not restricted to and concerned wholly with interstate commerce.

Intervening respondents further deny that the said order or the said amendment to section 22 of the interstate commerce act establishes a rate which is not just and reasonable, which is noncompensatory or which is less than required by the interstate commerce act, and deprives the petitioners herein of their property without due process of law, or unduly limits their liberty of contract.

Intervening respondents further deny that the legislation or the said order of the Interstate Commerce Commission in pursuance thereof, in any manner whatsoever violates the interstate commerce act or the Constitution of the United States, or is in any way void or unlawful as well as each and all the facts and conclusions set forth in the petition of the petitioners herein upon which could be predicated the alleged claims and assertions or any of them contained in said petition of said violation of the interstate commerce act and of the Constitution of the United States, and of the unlawfulness of said legislation or order.

Intervening respondents further deny that the petitioners herein have no adequate remedy at law.

Intervening respondents allege that the rate at which the petitioners named in said order of March 6th, 1923, are required to establish, issue, maintain, and operate the nontransferable interchangeable scrip coupon ticket referred to in said order, will furnish to the petitioners covered by said order, full, reasonable, fair and just compensation for services to be performed by said petitioners and included in said rate, and deny each and every allegation to the contrary contained in said petition.

Intervening respondents further allege that the said order of March 6th, 1923, was not made or entered either arbitrarily or unjustly or contrary to the relevant evidence or without evidence to support it and that in making its said order the Interstate Commerce Commission did not exceed the authority which had been conferred upon it or exercise its authority in an unlawful or unreasonable manner, and deny each and every allegation to the contrary contained in the petition of the petitioners herein.

Except as herein expressly admitted, the intervening respondents herein deny the truth of each and every allegation contained in
 134 said petition, in so far as it conflicts either with the allegations or statements set forth herein or with the statements or conclusions in the report of the Interstate Commerce Commission of January 26th, 1923, or the supplemental report and order of the Interstate Commerce Commission of March 6th, 1923, which are herein referred to and made a part hereof, as though set forth herein at length.

Wherefore your intervening respondents pray that the said petition be dismissed.

NATIONAL COUNCIL OF TRAVELING
 SALESMEN'S ASSOCIATIONS ET AL.,
 By SAMUEL BLUMBERG, Esq.,
 200 Fifth Avenue, New York City.
 HOKE SMITH, Esq.,
 Southern Building, Washington, D. C.,
General Counsel.
 POWERS & HALL, Esqs.,
 101 Milk Street, Boston, Mass.,
Of Counsel.

135 STATE OF NEW YORK,
City of New York, County of New York, ss:

Sol Wolerstein, being duly sworn, deposes and says that he is one of the intervening respondents herein; is the secretary of the National Council of Traveling Salesmen's Associations, and is the president of the Garment Salesmen's Association, Inc., others of the intervening respondents herein; that he has read the foregoing answer and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief; and that as to those matters he believes it to be true.

SOL WOLERSTEIN.

Sworn to before me this 10th day of April, 1923.

[SEAL]

ARTHUR M. LOEB, *Notary Public.*

New York County clerk's No. 192; New York County register's No. 4031. Commission expires March 30, 1924.

136 Also on the said twelfth day of April the order of April 10, entered by the Honorable George F. Morris, granting leave to the National Council of Traveling Salesmen's Association and others to intervene is confirmed by the court, Honorable Julian W. Mack, circuit judge, and Honorable George F. Morris and Honorable Elisha H. Brewster, district judges, sitting.

Also on the same day this cause is set down for hearing and is fully heard by the court, Honorable Julian W. Mack, circuit judge, and Honorable George F. Morris and Honorable Elisha H. Brewster, district judges, sitting.

On the thirteenth day of said April the following intervening petition is filed:

In United States District Court.

Petition of Baltimore & Ohio Railroad Company to intervene as Petitioner.

Filed April 13, 1923.

To the Honorable the Judges for the District Court of the United States for the District of Massachusetts:

The Baltimore & Ohio Railroad Company respectfully represents that it is a corporation organized and existing under the laws of the States of Maryland, Virginia, and Pennsylvania and a common carrier engaged in the business of operating railroads in interstate commerce; that it was a respondent and a party in interest before the Interstate Commerce Commission in the proceeding in which were made the orders dated January 26, 1923, and March 6, 1923, which the petitioners in the above entitled cause seek to have enjoined, set aside, annulled, and suspended.

Wherefore the said corporation now prays for leave to intervene as party petitioner in the above entitled cause.

BALTIMORE & OHIO RAILROAD COMPANY,

By its Attorney, CHAS. F. CHOATE, JR.

On the said thirteenth day of April the foregoing petition to intervene is allowed by the court, the Honorable George F. Morris, district judge for the District of New Hampshire, duly assigned to hold said District Court, sitting.

137 On the twenty-third day of April, A. D. 1923, an opinion was announced, granting a permanent injunction against the enforcement of the order of the commission, the Honorable Julian W. Mack, circuit judge, and Honorable George F. Morris and Honorable Elisha H. Brewster, district judges, sitting.

138 On the fifteenth day of May, A. D. 1923, the following affidavit of Samuel Blumberg on behalf of the National Council of Traveling Salesmen's Association et al., intervening respondents, is filed as of April 12, 1923:

In United States District Court.

Affidavit of Samuel Blumberg on behalf of the National Council of Traveling Salesmen's Association et al., intervening respondents, filed May 15, 1923, as of April 12, 1923.

STATE OF NEW YORK,

County of New York, ss:

Samuel Blumberg, being duly sworn, deposes and says: That he is an attorney and counsellor at law, duly admitted to practice in the

State of New York. He is one of the general counsel for the
 139 National Council of Traveling Salesmen's Associations, one of
 the intervening respondents herein, and as general counsel
 has for a number of years been in charge of the activities of said
 respondent as a proponent of the legislation enacted by the amend-
 ment of August 18th, 1922, to section 22 of the interstate commerce
 act, and in charge of the hearings before the Interstate Commerce
 Commission, and that he is one of the general counsel for said re-
 spondent in this suit and thoroughly familiar with the questions and
 facts herein involved.

1. Prior to August 18th, 1922, respondent, National Council of
 Traveling Salesmen's Associations, with others, endeavored to con-
 summate arrangements with the carriers by which an interchange-
 able scrip coupon ticket of the nature prescribed by the order of the
 Interstate Commerce Commission which is the subject of this suit,
 should be issued, but these efforts were unsuccessful. Thereafter
 respondent conferred with the Interstate Commerce Commission to
 the same purpose; but the commission indicated that it was without
 authority to order the issuance of such a ticket. Subsequently bills
 were introduced in both Houses of Congress, seeking to bring about
 such legislation as would make it mandatory upon the commission
 to order the carriers to issue mileage books, and after careful con-
 sideration and deliberation, and after the introduction of evidence
 and the taking of testimony, including that of a representative of
 the said Interstate Commerce Commission, before various committees
 of Congress, and after thorough investigation of the facts and
 140 policy involved as well as the constitutionality of the legisla-
 tion proposed and with various amendments made to the
 original bills, introduced, an act amending section 22 of the interstate
 commerce act was unanimously adopted by both Houses of Congress
 requiring the Interstate Commerce Commission to make an order in
 the premises, and became a law.

2. Thereafter and pursuant to the provisions of section 22 of the
 interstate commerce act, the commission instituted an original pro-
 ceeding on its own motion and issued its orders providing for in-
 vestigation so that it might obtain data and hear argument bearing
 upon the action it was required to take by the said act of Congress
 from any parties interested, and in pursuance of said order of in-
 vestigation hearings were held before the said commission at which
 testimony was introduced at great length and at which full oppor-
 tunity was given to all parties interested to present any facts
 and data that might be appropriate, and the various parties and all
 of them were given opportunity to make oral argument and to
 file briefs with the said commission. At all said hearings interven-
 ing respondents and the carriers, petitioners herein, adduced evi-
 dence and oral argument, and subsequently thereto filed
 briefs and memoranda. Thereafter the said commission made its re-
 ports and order of January 26th, 1923, and March 6th, 1923, after
 weighing carefully in the light of its own knowledge and experience

the facts and circumstances necessary for a proper determination of the proceeding.

141 3. At said hearings before the Interstate Commerce Commission, the records disclose that the following persons testified on behalf of your intervening respondents: David K. Klink, representing the International Federation of Commercial Travelers; John F. Shea, representing the American Hotel Association; Aaron M. Loeb, representing the National Council of Traveling Salesmen's Associations; James C. Lincoln, representing the Merchants' Association of New York, all of them men for many years interested in passenger and freight traffic over the railroads of this country, and all long experienced with problems of transportation. These men testified that the rates now enforced were so high that they did discourage and seriously curtail travel by the very persons who, if a proper reduction were fixed, would not only themselves do such an additional amount of traveling as would more than recoup the carriers for the direct loss from such a reduction, but who would also, by the additional amount of effort they would be enabled to put forth as a result of such a reduction, so stimulate the commerce of the country and its business generally that the freight traffic also of the carriers would be increased. In support of these statements the witnesses specified that the reduction would be an inducement to traveling salesmen on commission now reluctant to venture into new territories, and business houses now finding it impracticable because of the expense entailed to open up new territory, to do so, and that in the same manner and for the same reasons many more salesmen would travel, and that all salesmen generally would make longer trips.

142 4. A questionnaire sent to many representative merchants of this country in some fifty-four (54) different lines of industry by the intervening respondents herein, together with the answers received thereto, was introduced in evidence. These answers stated that if the reduction were granted it would greatly stimulate business. They showed the unanimous confidence of merchants that reduced rates would stimulate passenger and freight carriage far beyond any temporary loss in revenue directly entailed by the reduction. They showed, setting forth definite figures, that since rates were increased by approximately the amount of the reduction granted by the present order of the commission, large numbers of men have been taken off the road and in the case of nearly every firm there has been a large decrease in the number of weeks of travel by the salesmen of that firm. They showed a great limitation of travel, a resulting increase of prices and retarding of business, all of which they attributed mainly to the high rates of transportation. They stated definitely that with such a reduction as has now been ordered they themselves and merchants generally would increase the number of men on the road, extending the territory covered as well as the time of trips, and that such reduced rates would enable them to reenter and open to trade country districts and small towns. These answers

also stated that the high cost of transportation has driven merchants to comparatively inefficacious expedients resulting in much loss to the carriers, such as the use of the automobile, mail, photograph, telegraph, and telephone.

143 5. The testimony before the commission further showed that the general public, responding to the reduction which it would obtain by traveling greater distances during the prescribed period, would be enabled to consummate its affairs requiring travel with greater facility and, accordingly, urged by the reduction to be obtained, would so travel over much greater distances; that buyers would go to market oftener; that the producers of the country would be afforded larger and more intensified markets for their products; and that the consumers of the country would be afforded opportunities of choice and purchase of its commodities to an extent which would be proper and which would make for the general prosperity of the country and the advantage of its industries.

6. In addition, there were before the commission statements of men of affairs with wide experience in transportation, from both sides of Congress, which are in part as follows:

Senator CUMMINS. "In so far as the selling of transportation in this way and in so far as all the operations which are connected with that transportation are concerned which tend to reduce the cost of the service, the Interstate Commerce Commission may very well, in my judgment, establish a lower rate per mile than the ordinary rate which is now in force or which may be in force at any given time."

Senator McKELLAR. "Mr. President, the necessity of this legislation, it would seem to me, would be obvious to anyone. * * *

144 We are not seeking, Mr. President, to put any new or untried policy upon the railroads. We are simply readopting that wise policy that the railroads themselves had followed for many years prior to Government control. * * * In the next place, it is in another respect obviously for the best interest of the railroads. The undisputed proof is that business firms have had greatly to decrease their number of commercial travelers because of the excessive rates. Now, when we remember that every commercial traveler in this country is not only a traveler for the particular business which employs him, but is a business getter for the railroads as well, we must see the importance to the railroads themselves of adding to the number of commercial travelers in this country. Every time a drummer sells a bill of goods for his house he also sells transportation to the railroads. Not only his own transportation, but transportation for the goods which he sells. * * * Under these circumstances it seems to me a wholly misguided self-interest on the part of the railroads when they do not welcome the sale of mileage books.

"Mr. President, of course the sale of these tickets will greatly advantage the public. The enormous cost of travel must necessarily keep many from traveling that would travel, and under well-known economic rules we know that railroads depend for their prosperity upon the volume of business done rather than upon the height of the

rate. These books will unquestionably bring about an increase in travel, and for the same overhead greater revenues could be made from a lower passenger rate * * *

145 "Mr. President, the passage of this bill and the sale of these mileage books will greatly benefit the business of the country. The business of the country is at a low ebb. Business men are doubtful of the future. Their taxes are high, their tariff duties are high, all out of proportion to the amount of business they are doing. We should get back on a reasonable basis. We should get back to a condition of affairs that will make them safe in enlarging and extending their business. The more traveling men we can put upon the roads, the more we do for the business of the country and the more we do for the railroads. There is an imperative demand all over the country for this decrease of rates."

Senator ROBINSON. "Let me turn briefly to a consideration of what I believe will be the reasonable effect of this legislation. First, it will tend to stimulate travel. The railroad executives of the country do not seem to realize that by the maintenance of both excessive passenger and freight rates business which ordinarily should be conducted on the railroads is being diverted to other instrumentalities.

"Throughout the United States better roads are being constructed and thousands of commercial travelers and others in the course of their regular business are employing automobiles for traveling, and thousands of persons are receiving deliveries of freight through automobile trucks and similar means. The reason, in part, for it is that both passenger and freight rates are too high on the railroads. If freight rates were reduced to-morrow, judiciously reduced, intelligently reduced, it probably would promote more business and
146 yield more revenue than the railroads are now receiving, and the same is equally true of passenger rates.

"This diversion of traffic from railroads to automobiles and automobile trucks is a policy that is growing, and the railroads can only counteract it by doing something to invite and encourage the public to use their instrumentalities.

* * *
"I do not believe that any Senator will controvert the proposition that there is a point at which an ascending scale of rates will diminish revenue. If passenger fares were 10 cents per mile instead of 3.6 per mile as now, the revenues from passenger fares would probably be much less than the amount which is now received. I have before me a statement of the revenues received from passenger fares on all Class I railroads in the United States during every month, beginning January, 1915, and I am going to put that statement in the record. I take the position that the increases in passenger rates to which I am about to refer have not materially increased revenues but in all probability have diminished them.

* * *
"I wish to make a comparison now between the revenues under the rate when the average was 2.6 per mile and the revenues under

the rate when it became 3.6 per mile. As the Senator from Iowa has suggested, these figures are not conclusive of the point I am seeking to make; a great many circumstances properly enter into the consideration of the question, and I do not think it is possible for anyone to say that the analogy which I am drawing is a conclusive one; but during the first half of 1920 the total revenues from

an average fare of 2.6 per mile were \$564,586,242, while during 147 the first half of the following year, after the order to which

I have referred, granting a 20 per cent increase and providing for a surcharge on the fares of those who ride in Pullman or parlor cars had gone into effect, the revenues were \$573,254,211, or an increase of only a little over \$8,666,000, notwithstanding the rate had been increased on the average from 2.6 per mile to 3.6 per mile.

* * * * *

"That enforces the proposition I am making. Carry this comparison further. I said these rates were now so high that they discourage travel. The comparison I am making proves that. While the revenues for the first half of 1921, under the high rates I have already described, exceeded the revenues for the first half of 1920, by \$8,666,000 plus, the number of fares paid was approximately \$73,000,000 less in the first half of 1921 than in the first half of 1920. The number of fares paid in the first half of 1920 was 595,771,000. The number in the same period of 1921 was only 522,195,000 or more than 73,000,000 less, tending to show that these rates did discourage travel very greatly.

"In addition to that, not only were the number of fares sold under the high rate greatly diminished, as I have just shown, but the average journey traveled under the new and high rates for the first half of 1921 was only 35.4 miles, while the average journey under the lower rate in force in the first half of 1920 was 36.41 miles."

In a dissenting opinion in *Reduced Rates, 1922*, Commissioner Cox, of the Interstate Commerce Commission, said:

148 "Passenger fares at present rate levels have been reflected in a marked falling off in traffic. No further argument should be necessary than the fact that passenger travel is over seven billions of revenue passenger miles below normal. Representatives of industrial and commercial interests have made requests for a reduction in rates repeatedly, and they are unanimous in their opinion, in which I fully concur, that the issuance of a mileage book at a reduced rate of fare would not only stimulate travel but would also increase the present revenue of the carriers."

7. The evidence adduced further showed that because of the facts and circumstances testified to as above, namely, because of the large stimulation of freight and passenger travel to be expected, the difference in rate granted to persons coming within this class of travel would not be discriminatory. It was shown that the carriers had themselves for many years granted reduced mileage rates analogous to the present rate, and this after the development of the law against just such unreasonable discrimination as they claim the present order

creates, and that also there are at the present time and had been in the past analogous cases, such as those of commutation, convention, excursion, and tourists' tickets, granting reduced rates, which petitioners present claim of discrimination, if valid, would likewise prohibit.

8. The evidence was further to the effect that one of the bases for the present reduced rate is the wholesale principle, just as it is in the establishment of lower fares for commuters, excursionists, 149 and tourists, and as recognized by public utility corporations and public utility commissions in regard to the sale of gas, electricity, and telephone service. It is interesting to note that the commission referred in its report to this wholesale principle as applying to the present reduced rate, and while distinguishing it from the wholesale principle as far as the element of resale is concerned and from that appertaining to carload rates, did not distinguish it from the principle applying to the rates just mentioned.

9. It was shown by the witnesses called on behalf of the intervening respondents herein, as well as by the admissions of the witnesses of the carriers, that until reduced mileage rates were abolished by the Federal Railroad Administrator the carriers had in previous years issued mileage at rates varying from ten (10%) to thirty-three and $\frac{1}{3}$ (33 $\frac{1}{3}$ %) per cent, as well as that the reduced rates granted on other kinds of tickets, such as commutation, excursion, convention, and tourists' often equalled and exceeded the present reduction, and in this connection the commission said in the conclusion of its report of January 26th, 1923:

"And the fact that for many years prior to Federal control, the carriers voluntarily sold mileage books at discounts ranging from ten (10%) to thirty-three and one-third (33 $\frac{1}{3}$ %) per cent is not without significance."

10. Although the carriers attempted to show on the hearing that the expenses of accounting and selling these tickets would be 150 very large, it is urged they did not produce figures based on actual use. The only concrete evidence purporting to indicate such expenses consisted of a statement of pay roll for the passenger accounting department of the Southern Railway Company. But it was pointed out to the commission by deponent that this statement really showed that while in two (2) years, from 1915 to 1917, there had been an increase of twenty-five thousand (\$25,000) dollars for all office expenses, the increase in the expenses for the cost of auditing mileage and scrip tickets amounted to only one hundred (100) dollars thereof, although in that time there must have been a considerable increase in passenger travel and in the number of mileage books used, despite which the percentage of expenses attributable directly to mileage did not perceptibly increase.

11. The evidence further showed that the carriers are carrying, as is necessary, a large, permanent overhead in roadbed and rolling stock, and that by increasing the use thereof by such a reduction as the present one, this property, which is now not used to full ad-

vantage, would be availed of so as to decrease the ratio of this fixed overhead to the receipts of the carriers and thus to decrease passenger and freight operating ratios.

12. In the past, and at present, the carriers have sold long distance through tickets under which the moneys paid for such transportation were received by the original carrier issuing said ticket, even though it might actually undertake only a trifling part of the carriage involved, and yet, all other carriers are forced to honor said ticket despite the fact that such action on their part involves a compulsory giving of credit to the carrier selling the ticket, and there are many other examples where the railroads are compelled in the public interest to give credit and make agreements among themselves.

13. All the evidence before the commission referred to both interstate and intrastate fares, to the latter, however, only as constituting part of the general system of interstate commerce. It appeared therefrom that intrastate fares, in relation to the reduction here concerned, were so bound up with fares for purely interstate travel, and with the obtaining of a fair return, as nearly as might be, on the valuation of interstate carriers, as to make necessary in the proper regulating of interstate commerce and in preventing an undue burdening thereof with high rates, a reduction applying to all fares.

14. The historic case of the struggle against the reduction of postal rates in England, as well as the struggle of certain carriers in this country against commutation rate reductions, both of which in operation proved largely profitable, was shown to the commission.

15. As opposed to the evidence hereinbefore referred to, the carriers produced no evidence whatsoever of probative force or which was relevant to show that the proposed reduction of rate would decrease or would not increase their revenue.

The following colloquy occurred between your deponent and C. A. Fox, the chief witness for the carriers, in regard to the results of using mileage books:

By Mr. BLUMBERG:

"Q. As a matter of fact, do you know whether by the issuance of these books at these reduced rates that traffic was stimulated or whether traffic was curtailed?—A. We believe that it was not stimulated.

"Q. I do not want to know what you believe. Do you happen to know from statistics whether there was more travel as a result of these reduced rates? You don't know, do you?—A. I do not know.

"Q. So that, of course, you would not be prepared to say now whether if there were a reduced rate that traffic might be stimulated?—A. I am not prepared to say (92 S. M.)"

And again—

"Q. Well, that would not answer the question as I tried to put it to you. I wanted to know whether data was not available that

would directly show either an increase or decrease in the passenger revenue created by the use of these mileage books.—A. It is not available (108 S. M.).”

And once more—

“Q. I am asking you whether you have any direct information, concrete figures, for submission to this commission upon which you predicate your conclusion that there were revenue losses by the operation of these mileage books?—A. I have not, sir.

153 “Q. You haven’t tried to get it together or you don’t think it is available?—A. It would be practically an impossibility from the experience of the witness to compile data of that character.

“Q. Have you attempted to do so?—A. I would not know how to go about to do it (118 S. M.).”

16. In all the years commercial travelers have endeavored to secure an interchangeable mileage book at a reduced rate, first by conference with the carriers themselves, then by petition to the Interstate Commerce Commission, later by congressional legislation, and finally by investigation by the commission itself, the carriers, with all the statistical data available, with the millions of dollars spent in their statistical departments, did not at the hearings before the commission offer any appropriate data, and their failure to do so might be considered as tantamount to an admission that if compiled figures would be shown favorable to the making of a reduction. Further, the carriers did not have compiled nor did they produce any testimony whatever as to the effect of mileage rates in Canada, although, as deponent is informed and believes, such reduced rates have been used there for some time.

17. In the hearings before the commission, In re Reduced Rates, 1922, a chart was introduced, as deponent is informed and verily believes, showing the pre-war trend of passenger traffic from 1890 to 1915 and projected through and after the war. That chart showed that the peak of passenger travel was reached in 1920, and 154 that there was a tremendous and precipitous decline in 1921, which as your deponent verily believes was due either to business depression or to the high level of passenger rates. Railroad rates have remained at the same high level. Although business conditions have been gradually returning to a normal basis, there still exists the tremendous deficit in revenue passenger miles below normal, which deponent can only believe is due to such high rates.

18. Your affiant is familiar with the evidence adduced on both sides, and in many cases directly with the original facts involved, and as he verily believes, the evidence adduced upon the part of the intervening respondents herein, as set forth above, is true. As deponent verily believes, travel and freight traffic will be greatly stimulated to such an extent as to equal, or in all probability largely to overcome, any temporary decrease in revenue. The expenses of accounting and selling these tickets under the facilities of the carriers already existing, will be negligible, and especially so in comparison

with the increase of revenues just mentioned, and again, will be largely compensated, if not more than met, by the additional benefit accruing to the carriers because of receiving the money for the ticket ordered in advance.

19. Such scrip coupon ticket as now ordered issued by the Interstate Commerce Commission is justified by the circumstances
155 and conditions shown above. The evidence presented clearly established that fact and furthermore the order for such scrip coupon ticket is fully supported by the findings of the commission, as will appear from a reading thereof.

20. The petitioners herein have not shown any grounds either to the commission or to this court in their petition sufficient to justify this court in going behind the findings of fact and conclusions of the Interstate Commerce Commission, the body authorized by law to administer the interstate commerce act.

21. Deponent further says that the carriers have not shown in their petition that any damage or irreparable injury of any kind would result to them from a compliance with the said order of the Interstate Commerce Commission. For, as pointed out above, there will be a great stimulation in traffic, which the carriers have overlooked and as to which they have made no allegations, and accordingly a corresponding increase in revenue rather than any loss whatever. Moreover the carriers have the right to resort to the Interstate Commerce Commission and ask for further relief in case any such loss should appear. If it be said that there may be a temporary loss to the carriers, it is on the other hand true, that if any interlocutory injunction is made as sought by the petitioners herein, the loss to the public, in case the order should afterwards be held valid, would be at least
as great as the decrease in rate claimed by the carriers,
156 and would be certain to ensue to the public, while the loss claimed by the carriers is, at best, problematical.

22. It is contended that the carriers herein have not offered facts of such probative force as would justify this court in issuing an interlocutory injunction or postponing the operation of the order of the Interstate Commerce Commission, duly made in the course of its duties as prescribed by law, and that the petitioners herein seem to have overlooked entirely the great inconvenience entailed to the public that postponement of compliance with the order of the commission will create. The making of such an interlocutory injunction as is sought will frustrate the purposes of the commission by retarding the stimulation of business and the return to normal conditions.

23. There is a much broader and more far reaching end to be served by compliance with the order of the commission than the mere saving to the purchasers of scrip-coupon tickets of a 20% reduction, as was shown by the evidence before the commission, namely, the stimulation of business of the whole country as well as the increase of revenue to the carriers, and the hastening of a return to normal conditions, all of which will be prevented and indefinitely

postponed if such an interlocutory injunction should issue in this case.

157 Wherefore your deponent, on behalf of the intervening respondents herein, respectfully prays that the interlocutory injunction requested by the petitioners herein be denied.

SAMUEL BLUMBERG.

Sworn to before me this 12th day of April, 1923.

[SEAL.]

ARTHUR M. LOEB, *Notary Public*.

New York County clerk's No. 192; New York County register's No. 4031. Commission expires March 30, 1924.

158 In United States District Court.

Also on the said fifteenth day of May, A. D. 1923, the following petition to intervene is filed:

Petition to intervene as petitioners by Wabash Railway Company, Pere Marquette Railway Company, and Chicago, Indianapolis & Louisville Railway Company.

Filed May 15, 1923.

To the Honorable the Judges of the District Court of the United States for the District of Massachusetts:

Respectfully represents the Wabash Railway Company, a corporation of the State of Indiana; the Pere Marquette Railway Company, a corporation of the State of Michigan; and the Chicago, Indianapolis & Louisville Railway Company, a corporation of the State of Indiana, that they are corporations organized and existing under the laws of the respective States above named; that they are common carriers engaged in the business of operating steam railroads in interstate commerce and are subject to the provisions of the interstate commerce act and acts in amendment thereof; that they are members of the Eastern group as established by the Interstate Commerce Commission in Increased Rates, 1920, pursuant to the provisions of section 15a of the interstate commerce act; that they were parties respondent and parties in interest to the proceedings before the Interstate Commerce Commission in which was made the order of March 6, 1923, which is sought to be enjoined, set aside, annulled, and suspended in the above-entitled proceeding.

Wherefore the above-named corporations respectfully pray for leave to intervene as parties petitioner in the above-entitled cause.

WABASH RAILWAY COMPANY,
PERE MARQUETTE RAILWAY COMPANY,
CHICAGO, INDIANAPOLIS & LOUISVILLE
RAILWAY COMPANY,

By their attorneys, CHAS. F. CHOATE, JR.,
FREDERICK H. NASH,
JAMES GARFIELD.

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Thereupon, on the same day, the foregoing petition to intervene is allowed by the court, the Honorable Judges Julian W. Mack, George F. Morris, and Elisha H. Brewster, sitting.

159 Also on the said fifteenth day of May, A. D. 1923, the following final decree is entered:

In United States District Court.

Final decree.

May 15, 1923.

Before the Honorable Julian W. Mack, United States circuit judge, and the Honorable George F. Morris and the Honorable Elisha H. Brewster, United States district judges, holding the District Court pursuant to urgent deficiencies act (38 Stat. 219).

This cause came on to be heard May 15, 1923, on the application of the petitioners for an injunction and the motion of the United States to dismiss the petition and the answers of the Interstate Commerce Commission, the National Council of Traveling Salesmen's Associations, and Garment Salesmen's Associations, Inc., intervening respondents, and upon the record of the proceedings before the Interstate Commerce Commission in Interchangeable Mileage Ticket Investigation, No. 14104, the affidavit of Samuel Blumberg and the two affidavits of Julius Parmalee, said record and said affidavits being the only evidence introduced at the hearing, it having been agreed at the argument that the cause should be deemed submitted for final hearing, and was argued by counsel and submitted to the court; thereupon, upon consideration thereof, it was ordered,

adjudged, and decreed as follows, viz:

160 1. That the motion of the United States to dismiss the petition be, and the same is hereby, denied.

2. That the application for a permanent injunction be, and the same is hereby, granted as prayed in the petition, and that the order of the Interstate Commerce Commission in the Interchangeable Mileage Ticket Investigation, No. 14104, on the docket of the commission, entered March 6, 1923, and referred to in the petition, be, and the same is hereby, permanently and forever annulled and suspended; and that the respondents and each of them, their officers, members, examiners, agents, and attorneys, and any or all persons whosoever be permanently and forever restrained and enjoined from enforcing or in any manner attempting to enforce or carry out the said order or any of the terms thereof.

By the Court:

JULIAN W. MACK,
United States Circuit Judge.

GEORGE F. MORRIS,

ELISHA H. BREWSTER,

United States District Judges.

Approved as to form only.

ROBERT O. HARRIS,

For United States of America.

161 From the foregoing final decree the National Council of Traveling Salesmen's Associations, and Aaron M. Loeb, as president; Samuel H. Liberman, as 1st vice president; Leon S. Fox, as 2nd vice president; Selden A. McOmber, as 3rd vice president; George W. Allen, as 4th vice president; Sol Wolerstein, as secretary; and Archie E. Foise, as treasurer; and Garment Salesmen's Association, Inc., intervening respondents, and the United States of America respondent, and Interstate Commerce Commission, intervening respondents, claim an appeal to the Supreme Court of the United States, and the National Council of Traveling Salesmen's Associations et al. give good and sufficient security that they will prosecute their appeal to effect and answer all costs if they fail to make their appeal good, and said appeals are allowed accordingly.

162 In United States District Court.

Opinion.

April 23, 1923.

Before Mack, circuit judge; Morris and Brewster, district judges.

PER CURIAM:

While this case came on to be heard on motion of petitioners for a temporary injunction to restrain the enforcement of an order of the Interstate Commerce Commission, and on motion of the United States to dismiss the petition, it was agreed at the argument that the cause should be deemed submitted for final hearing. The case involves the constitutionality of the act. The suit is to annul an order of the Interstate Commerce Commission made March 6, 1923.

The Interstate Commerce Commission was directed, under the amendment of section 22 of the interstate commerce act, approved August 18, 1922, to require, after notice and hearing, each carrier by rail subject to the act to issue at such offices as may be prescribed by the commission interchangeable mileage or scrip coupon tickets at just and reasonable rates, good for passenger carriage upon passenger trains of all carriers by rail subject to the act, with the privilege of granting certain exemptions as provided therein.

Pursuant to this amendment proceedings were instituted by the commission, and as a result thereof the carriers named, except as exempted by the commission, were ordered to issue nontransferable interchangeable scrip coupon tickets in denominations of ninety dollars, obtainable at a reduction of twenty per cent from the face value thereof.

Although the carriers opposed any reduction in rates for the scrip coupons below the standard rates, it is clear from the record that the commission proceeded on the assumption that the spirit and theory of the congressional amendment required them to order the scrip coupons to be issued at reduced rates, at least in so far as such rates could not be deemed confiscatory. There is no finding in the

record that would indicate that the commission, if it had
 163 exercised an independent judgment apart from what it conceived to be the plain spirit and theory of the amendment, would have ordered the scrip coupons to be issued at reduced rates. The only finding of the commission that could possibly be relied upon as indicating that the commission exercised an independent judgment is the statement in the majority report that "in addition to the obvious spirit of the law, the record warrants the view that a coupon ticket at a reasonably reduced fare should be established, at least for an experimental period." But this finding is followed by the statement that "in no other way can the apparent purpose of the law be given practical effect." It would seem fairly plain, therefore, that the furthest the commission goes in its finding is to conclude that the record might justify the issuance of coupons at reasonably reduced rates for an experimental period; but there is nothing to indicate that the commission, if it had felt free to exercise its own judgment, would have assumed the responsibility for establishing the reduced rate, even for an experimental period.

It is not entirely clear whether the majority of the commission acted under an interpretation of the amendment that it was mandatory upon them so to reduce the rates for interchangeable scrip coupon tickets or upon an assumed desire of the Congress, though not expressed by the amendment in mandatory form, that they should so do. In our judgment, the amendment is not mandatory in this respect. It does not prescribe that such coupons shall be issued at a reduced rate. Attempts to fix specific reduced rates by legislation were defeated. If the Congress had intended that some reduction should be mandatory, leaving only the amount thereof to be determined by the commission under the phrase "just and reasonable," such intent could readily have been expressed in clear language. The fair and natural interpretation of the language used by the Congress makes mandatory the issuance of such coupons at just and
 164 reasonable rates, but the ultimate if not the original determination of what shall be just and reasonable rates for such coupons is placed entirely upon the commission. If, therefore, the commission acted upon a different interpretation of the amendment, an error of law was the basis of its action and order. "The question is of the meaning of a statute, and upon that, of course, the courts must decide for themselves." *Chicago, Milwaukee & St. Paul Ry. Co. v. McCaull-Dinsmore Co.*, 253 U. S. 97. If, on the other hand, it acted upon the interpretation which we have found to be the correct interpretation of the amendment, but based its conclusions not upon its own independent judgment, but upon what it believed to be the spirit and purpose of the act, which, if it means something other than a sound interpretation of the act, must mean some supposed desire of the Congress, it acted contrary to law in abdicating the functions vested in it.

In either case its order is without warrant of law and for this reason must be annulled.

The amendment itself is attacked as unconstitutional, in that in requiring the interchangeable scrip coupons it compels an interchange of credit between the railroads and thereby compels a service at the risk of complete financial loss in case of the insolvency of the road from which the scrip may have been purchased. In our judgment, the decisions of the Supreme Court upholding the Carmack amendment (Atlantic Coast Line R. R. Co. v. Riverside Mills, 219 U. S. 186), the right of a legislature to compel the interchange of cars (Michigan Central R. R. Co. v. Michigan R. R. Commission, 236 U. S. 615), and of Congress to compel the establishment of joint rates (St. Louis Southwestern Ry. Co. v. U. S., 245 U. S. 136) necessarily involve the determination of the right to compel an interchange of credits as between the roads despite the possible loss from such an insolvency. As the commission points out, the railroads themselves have maintained the interchangeable scrip coupons established under Government operation, and have thus voluntarily established a similar interchange of credits over all roads except electric and short line carriers. Under the present amendment the extent of such credit interchange is left to the commission, and must, of course, be reasonable, but in requiring the interchange in respect to the scrip coupons the action of Congress must be upheld as a constitutional exercise of power within the aforesaid decisions.

A permanent injunction will therefore be granted against the enforcement of the order of the commission.

JULIAN W. MACK, *Circ. Judge.*

166

In United States District Court.

Petition for appeal by National Council of Traveling Salesmen's Associations et al.

Filed May 15, 1923.

National Council of Traveling Salesmen's Associations, an unincorporated association, and Aaron M. Loeb, as president; Samuel H. Liberman, as first vice president; Leon S. Fox, as second vice president; Selden A. McOmber, as third vice president; George W. Allen, as fourth vice president; Sol Wolerstein, as secretary; and Archie E. Foise, as treasurer thereof; and Garment Salesmen's Association, Inc., intervening respondents, feeling themselves aggrieved by the final order or decree of the District Court made and entered May 15, 1923, pray an appeal to the Supreme Court of the United States therefrom.

The particulars wherein they consider the final order or decree erroneous are set forth in the assignment of errors on file to which reference is made.

Respondents pray that a transcript of the record, proceedings, and papers on which the final order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

SAMUEL BLUMBERG,
HOKE SMITH,
POWERS & HALL,
JAMES N. CLARK,

*Solicitors for National Council of Traveling
Salesmen's Associations et al.*

168

In United States District Court.

Assignment of errors by and on behalf of National Council of Traveling Salesmen's Associations, et al.

Filed May 15, 1923.

National Council of Traveling Salesmen's Association, an unincorporated association, and Aaron M. Loeb, as president; Samuel H. Liberman, as first vice president; Leon S. Fox, as second vice president; Selden A. McOmber, as third vice president; George W. Allen, as fourth vice president; Sol Wolerstein, as secretary; and Archie E. Foise, as treasurer thereof; and Garment Salesmen's Association, Inc., intervening respondents, now come, by their counsel, and in connection with their petition for appeal file the following assignment of errors on which they will rely on their appeal to the Supreme Court of the United States from the final order or decree of the District Court entered May 15, 1923.

The District Court erred:

I. In denying the motion of the United States to dismiss the petition and in not sustaining the motion.

II. In deciding, holding, and adjudging as follows:

169 Although the carriers opposed any reduction in rates for the scrip coupons below the standard rates, it is clear from the record that the commission proceeded on the assumption that the spirit and theory of the congressional amendment required them to order the scrip coupons to be issued at reduced rates, at least in so far as such rates could not be deemed confiscatory. There is no finding in the record that would indicate that the commission, if it had exercised an independent judgment apart from what it conceived to be the plain spirit and theory of the amendment, would have ordered the scrip coupons to be issued at reduced rates.

III. In deciding, holding, and adjudging as follows:

The only finding of the commission that could possibly be relied upon as indicating that the commission exercised an independent judgment is the statement in the majority report that "in addition to

the obvious spirit of the law, the record warrants the view that a coupon ticket at a reasonably reduced fare should be established, at least for an experimental period." But this finding is followed by the statement that "in no other way can the apparent purpose of the law be given practical effect." It would seem fairly plain, therefore, that the furthest the commission goes in its finding is to conclude that the record might justify the issuance of coupons at reasonably reduced rates for an experimental period; but there is nothing to indicate that the commission, if it had felt free to exercise its own judgment, would have assumed the responsibility for establishing the reduced rate, even for an experimental period.

IV. In deciding, holding, and adjudging as follows:

It is not entirely clear whether the majority of the commission acted under an interpretation of the amendment that it was mandatory upon them so to reduce the rates for interchangeable script coupon tickets, or upon an assumed desire of the Congress, though not expressed by the amendment in mandatory form, that they should so do.

V. In deciding, holding, and adjudging as follows:

That either "the commission acted upon a different interpretation of the amendment" and thus that "an error of law was the basis of its action and order" or that it "based its conclusions not upon its own independent judgment, but upon what it believed to be the spirit and purpose of the act, which, if it means something other than a sound interpretation of the act, must mean some supposed desire of the Congress," and thus "acted contrary to law in abdicating the functions vested in it."

"In either case its order is without warrant of law and for this reason it must be annulled."

VI. In not sustaining the order of the Interstate Commerce Commission.

VII. In not dismissing the petition.

VIII. In issuing the permanent injunction and in permanently annulling and suspending the order of the Interstate Commerce Commission.

Wherefore, respondents and each of them pray that the final order or decree of the District Court may be reversed, annulled, and set aside, with directions that the permanent injunction shall be dissolved and the petition dismissed, and for such other and further order as may be appropriate.

SAMUEL BLUMBERG,
HOKE SMITH,
POWERS & HALL,
JAMES N. CLARK,

*Solicitors for National Council of Traveling
Salesmen's Associations et al.*

171 In United States District Court.

Order allowing appeal of National Council of Traveling Salesmen's Associations et al.

May 15, 1923.

In the above-entitled cause, National Council of Traveling Salesmen's Associations, an unincorporated association, and Aaron M. Loeb, as president; Samuel H. Liberman, as first vice president; Leon S. Fox, as second vice president; Selden A. McOmber, as third vice president; George W. Allen, as fourth vice president; Sol Wolerstein, as secretary; and Archie E. Foise, as treasurer thereof; and Garment Salesmen's Association, Inc., intervening respondents, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final order or decree of the District Court, and having also made and filed an assignment of errors, and having in all respects conformed to the statute and rules of court in such case made and provided:

172 It is ordered and decreed that the appeal be, and the same is hereby, allowed as prayed and made returnable within thirty (30) days from the date hereof, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which said order or decree was made and entered to the Supreme Court of the United States; and

It is further ordered and decreed that the appellants, National Council of Traveling Salesmen's Associations et al. have ten (10) days to file their bond on appeal herein in the amount of two hundred and fifty dollars.

JULIAN W. MACK,
United States Circuit Judge.
GEORGE F. MORRIS,
ELISHA H. BREWSTER,
United States District Judges.

173 In United States District Court.

Petition for appeal by United States of America and Interstate Commerce Commission.

Filed May 15, 1923.

United States of America, respondent, and Interstate Commerce Commission, intervening respondent, feeling themselves aggrieved by the final order or decree of the District Court made and entered May 15, 1923, pray an appeal to the Supreme Court of the United States therefrom.

The particulars wherein they consider the final order or decree erroneous are set forth in the assignment of errors on file to which reference is made.

Respondents pray that the transcript of the record, proceedings and papers on which the final order or decree was made and entered

duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

ROBERT O. HARRIS,
United States Attorney, District of Massachusetts.
BLACKBURN ESTERLINE,
Assistant to the Solicitor General.
P. J. FARRELL,
Solicitor for Interstate Commerce Commission.

In United States District Court.

Assignment of errors by and on behalf of the United States of America and Interstate Commerce Commission.

Filed May 15, 1923.

United States of America, respondent, and Interstate Commerce Commission, intervening respondent, now come, by their respective counsel, and in connection with their petition for appeal file the following assignment of errors on which they will rely on their appeal to the Supreme Court of the United States from the final order or decree of the District Court entered May 15, 1923.

The District Court erred:

1. In denying the motion of the United States to dismiss the petition and in not sustaining the motion.

174 II. In deciding, holding, and adjudging as follows:

Although the carriers opposed any reduction in rates for the scrip coupons below the standard rates, it is clear from the record that the commission proceeded on the assumption that the spirit and theory of the congressional amendment required them to order the scrip coupons to be issued at reduced rates, at least in so far as such rates could not be deemed confiscatory. There is no finding in the record that would indicate that the commission, if it had exercised an independent judgment apart from what it conceived to be the plain spirit and theory of the amendment, would have ordered the scrip coupons to be issued at reduced rates.

III. In deciding, holding, and adjudging as follows:

The only finding of the commission that could possibly be relied upon as indicating that the commission exercised an independent judgment is the statement in the majority report that "in addition to the obvious spirit of the law, the record warrants the view that a coupon ticket at a reasonably reduced fare should be established, at least for an experimental period." But this finding is followed by the statement that "in no other way can the apparent purpose of the law be given practical effect." It would seem fairly plain, therefore, that the furthest the commission goes in its finding is to conclude that the record might justify the issuance of coupons at reasonably reduced rates for an experimental period; but there is nothing to indicate that the commission, if it had felt free to exercise its own

judgment, would have assumed the responsibility for establishing the reduced rate, even for an experimental period.

IV. In deciding, holding, and adjudging as follows:

It is not entirely clear whether the majority of the commission acted under an interpretation of the amendment that it was mandatory upon them so to reduce the rates for interchangeable scrip coupon tickets, or upon an assumed desire of the Congress, though not expressed by the amendment in mandatory form, that they should so do.

V. In not sustaining the order of the Interstate Commerce Commission.

VI. In not dismissing the petition.

VII. In issuing the permanent injunction.

Wherefore respondents and each of them pray that the final order or decree of the District Court may be reversed, annulled, and set aside, with directions that the permanent injunction shall be dissolved and the petition dismissed, and for such other and further order as may be appropriate.

ROBERT O. HARRIS,
United States Attorney, District of Massachusetts.
BLACKBURN ESTERLINE,
Assistant to the Solicitor General.
P. J. FARRELL,
Solicitor for the Interstate Commerce Commission.

175

In United States District Court.

Order allowing appeal of United States of America and Interstate Commerce Commission.

Filed May 15, 1923.

In the above-entitled cause United States of America, respondent, and Interstate Commerce Commission, intervening respondent, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final order or decree of the District Court, and having also made and filed an assignment of errors, and having in all respects conformed to the statute and rules of court in such case made and provided:

It is ordered and decreed that the appeal be, and the same is hereby, allowed as prayed and made returnable within thirty (30) days from the date hereof, and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which said order or decree was made and entered to the Supreme Court of the United States.

JULIAN W. MACK,
United States Circuit Judge.
GEORGE F. MORRIS,
ELISHA H. BREWSTER,
United States District Judges.

176

In United States District Court.

Notice of appeal.

Filed May 17, 1923.

To the Honorable Jay R. Benton, Attorney General of the Commonwealth of Massachusetts:

You are hereby notified that on May 15th, 1923, the appeal of the National Council of Traveling Salesmen's Associations et al. and Garment Salesmen's Association, Inc., intervening respondents, was allowed from the final decree of the District Court to the Supreme Court of the United States, and that the order allowing the said appeal makes the same returnable within thirty days from the date thereof.

This notice is given to you pursuant to urgent deficiencies act, October 22, 1913 (38 U. S. Stat. L. 221).

SAMUEL BLUMBERG,
HOKE SMITH,
POWERS & HALL,
JAMES N. CLARK,

Solicitors for National Council of Traveling Salesmen's Associations et al. and Garment Salesmen's Association, Inc., Appellants.

May 17th, 1923.

Service of a copy of the within notice is hereby admitted and acknowledged this 17th day of May, 1923.

JAY R. BENTON,
Attorney General of the Commonwealth of Massachusetts.

177

In United States District Court.

Notice of appeal.

Filed May 17, 1923.

To the Honorable J. R. Benton, Attorney General of the State of Massachusetts:

You are hereby notified that on May fifteenth, 1923, an appeal was allowed from the final decree of the District Court to the Supreme Court of the United States and that the order allowing the appeal makes the same returnable within thirty (30) days from the date thereof.

This notice is given you pursuant to urgent deficiencies act, October 22, 1913 (38 U. S. Stat. L. 221).

ROBERT O. HARRIS,
United States Attorney, District of Massachusetts.
BLACKBURN ESTERLINE,
Assistant to the Solicitor General.

Service of a copy of the within notice is hereby admitted and acknowledged this 17th day of May, 1923.

JAY R. BENTON,
Attorney General of Massachusetts.

178 In United States District Court.

Præcipe filed by the United States and the Interstate Commerce Commission.

Filed May 29, 1923.

To the Clerk:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal of the United States of America and Interstate Commerce Commission and include therein in the order given below, the following matter, viz:

1. Petition and exhibits.
2. Motion of the United States to dismiss.
3. Appearance and answer of the Interstate Commerce Commission.
4. Affidavits offered by petitioners.
5. Certified copy of record before the Interstate Commerce Commission.
6. Opinion.
7. Journal entries in their appropriate order.
8. Final decree.
9. Petition for appeal.
10. Assignment of errors.
11. Order allowing appeal.
12. Order extending time to prepare transcript and docket appeal.
13. Notice of appeal to Attorney General of Massachusetts.
14. Præcipe for record.

ROBERT O. HARRIS,
United States Attorney, District of Massachusetts.
 BLACKBURN ESTERLINE,
Assistant to the Solicitor General.
 P. J. FARRELL,
Solicitor for Interstate Commerce Commission.

Service of a copy of the within præcipe is hereby admitted and acknowledged this 28th day of May, 1923.

CHAS. F. CHOATE, Jr.,
Solicitor for Appellees and Intervening Appellees.

179 In United States District Court.

Appellees' præcipe for record.

Filed June 4, 1923.

To the Clerk:

Please include in the transcript of the record on appeal in the above-entitled cause in addition to the matters set forth in the præ-

cipe for record heretofore filed by the United States of America and the Interstate Commerce Commission the following, viz:

1. Petition of National Council of Traveling Salesmen's Associations and others to intervene, together with order granting leave to intervene and order confirming said order.
2. Appearance and answer of the National Council of Traveling Salesmen's Associations and others, intervening respondents.
3. Petition of the Baltimore & Ohio Railroad Company to intervene, together with order granting leave to intervene.
4. Petition of Wabash Railway Company, Pere Marquette Railway Company, and Chicago, Indianapolis & Louisville Railway Company to intervene, together with order granting leave to intervene.
5. Petition for appeal on behalf of the National Council of Traveling Salesmen's Associations and others and Garment Salesmen's Associations, Inc.
6. Order allowing appeal of National Council of Traveling Salesmen's Associations and others and Garment Salesmen's Associations, Inc.
7. Assignment of errors on behalf of National Council of Traveling Salesmen's Associations and others and Garment Salesmen's Associations, Inc.
- 180 8. Notice of appeal to attorney general of Massachusetts on behalf of National Council of Traveling Salesmen's Associations and others and Garment Salesmen's Associations, Inc.
9. Order extending time to prepare transcript and docket appeal on behalf of the National Council of Traveling Salesmen's Associations and others and Garment Salesmen's Associations, Inc.
10. Appellees' præcipe for record.

CHAS. F. CHOATE, JR.,
Solicitor for Appellees.

Service of a copy of the within præcipe is hereby admitted and acknowledged this 4th day of June, 1923.

ROBERT O. HARRIS,
United States Attorney, District of Massachusetts.
POWERS & HALL,
Solicitors for National Council of Traveling Salesmen's Associations and Garment Salesmen's Associations, Inc., intervening respondents.

181 In United States District Court.

Præcipe for record.

Filed June 14, 1923.

To the Clerk:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal of the National Council of Travel-

ing Salesmen's Associations, an unincorporated association, and Aaron M. Loeb, as president; Samuel H. Liberman, as first vice president; Leon S. Fox, as second vice president; Selden A. McOmber, as third vice president; George W. Allen, as fourth vice president; Sol Wolerstein, as secretary; and Archie E. Foise, as treasurer thereof; and Garment Salesmen's Association, Inc., and include therein, in the order given below, the following matter, viz:

1. Petition and exhibits.
2. Motion and petition to intervene, together with order granting leave to intervene and order confirming said order.
3. Appearance and answer.
4. Affidavits offered by petitioners.
- 182 5. Affidavit of Samuel Blumberg.
6. Certified copy of record before the Interstate Commerce Commission.
7. Opinion.
8. Journal entries in their appropriate order.
9. Final decree.
10. Petition for appeal.
11. Assignment of errors.
12. Order allowing appeal.
13. Order extending time to prepare transcript and docket appeal.
14. Notice of appeal to Attorney General of Massachusetts.
15. Præcipe for record.

HOKE SMITH,
SAMUEL BLUMBERG,
POWERS & HALL,
JAMES N. CLARK,

*Solicitors for National Council of Traveling
Salesmen's Associations et al.*

Service of a copy of the within præcipe is hereby admitted and acknowledged this 14th day of June, 1923.

CHAS. F. CHOATE, JR. (by J. G.),
Solicitor for Appellees.

183 *Bond on appeal for \$250.*

Filed and approved May 22, 1923.

[Omitted in printing.]

190 *Condensed statement of evidence before Interstate Commerce Commission.*

[Filed July 26, 1923.]

Before the Interstate Commerce Commission.

Docket No. 14104.

Interchangeable mileage ticket investigation.

HEARING ROOM, I. C. C. BUILDING,
Washington, D. C., Tuesday, September 26, 1922.

The above-entitled matter came on for hearing at 10 o'clock a. m., pursuant to notice.

Present: Commissioners Meyer, Lewis, and Cox.

Present also: Chief Examiner R. E. Quirk, Dr. M. O. Lorenz, director of statistics, and Mr. A. Wylie, director of accounts.

Proceedings:

Commissioner MEYER. Gentlemen, this is a hearing in Docket No. 14104, the order in which sufficiently recites the purpose of the hearing. Without further preliminaries, we will listen to the first witness.

C. A. Fox, a witness called by the respondents, testified:

I reside in Chicago, Illinois. I am chairman of the Central Passenger Association, and have been since March, 1920. I have been in the railroad service since 1887. From 1897 to 1900, I was chief clerk of the mileage bureau of the Central Passenger Association; from 1900 to 1918 I was secretary of the Central Passenger Association and chief clerk of its mileage bureau, and from March, 1918, to March, 1920, I was with the division of traffic (passenger), United States Railroad Administration, Washington, D. C.

In this proceeding I represent 168 railroads, 149 of which are class 1 roads and 19 of which are class 2 roads, covering approximately 225,000 miles.

There is no public advantage in the sale of both mileage and scrip tickets. The present forms of scrip coupon tickets, now issued generally in \$15, \$30, and \$90 denominations, fully meet the requirements of the new law, although such forms of tickets have never been satisfactory to the carriers.

These scrip books are issued in coupon form and are equivalent to currency, coupons being detached to cover the value of transportation furnished at normal one-way fares, published in regular tariffs filed with the commission. The coupons are accepted by conductors on trains; but, if holder desires to travel between two competitive points, by a carrier or carriers whose distance is longer than the

direct or short line, coupons of value equivalent to the through fare via the direct or short line are detached by the ticket agent, and a passage ticket of ordinary one-way form is issued in exchange therefor. The holder thus obtains the benefit of short-line fares via the longer routes between all competitive points in the United States to the same extent as possible by purchase of ordinary one-way tickets at normal fares.

The carriers contend there should be no reduction in fares. The present interchangeable scrip ticket meets all requirements as far as the varying rate levels are concerned.

At no time since the passage of the transportation act have the carriers as a whole earned the net return contemplated by that act. In this relation there is submitted herewith, as Exhibit No. 4, preliminary report of revenue and expenses of class 1 roads and large switching and terminal companies, July, 1922, and seven months' period ended July 31st, 1922, compared with same period of 1921. (The paper referred to was received in evidence, marked "Carriers' Exhibit No. 4, Witness Fox," and is side page 295 hereof.)

And as Exhibit No. 5, net railway operating income compared with 6 per cent on tentative valuation, class 1 roads and large switching and terminal companies, January, 1922, to July, 1922, 192 prepared by the Bureau of Railway Economics. (The paper referred to was received in evidence, marked "Carriers' Exhibit No. 5, Witness Fox," and is side page 296 hereof.)

Any form of reduced rate mileage or scrip ticket good for nationwide use on all the railroads of the country will inevitably result in a substantial reduction in passenger revenues, the extent of which will vary according to the percentage of reduction from the one-way fare and the denomination of the ticket. It is practically impossible to accurately estimate the amount of this reduction, because there has never been a reduced rate ticket which was good for use on all roads throughout the entire country. If such a ticket be introduced, a great proportion of the one-way travel between large commercial centers such as Chicago and New York, New York and Orleans, Chicago and Denver, San Francisco, etc., and theatrical, Chautauqua, and other similar traffic will be quick to take advantage of such a ticket. In other words, the larger the scope of territory in which the ticket can be used, the greater will be the inroads upon the passenger revenue of the carriers.

The gross passenger revenues for the year 1921 were for class 1 roads \$1,152,635,016. The estimated passenger revenues for the year 1922, based on I. C. C. reports for the first six months, will be \$1,070,167,869, or a prospective decrease of \$82,467,147.

These figures were also compiled by the Bureau of Railway Economics.

These passenger revenues include commutation and surcharge, but exclude mail and express for both years. This showing results in the face of the wiping out of the war tax January 1, 1922.

Some years ago when mileage tickets were in effect and reductions in various degrees from the basic rate per mile were accorded in different parts of the country, even though such mileage tickets were restricted to smaller territorial limits and were not interchangeable between all lines in the same territory, an average of not less than 20 per cent of the total passenger revenue in certain sections of the country was derived from mileage tickets; in fact, on some lines, as high as 60 per cent of the total passenger traffic was so moved.

Confirming these statements, the record shows that for the fiscal year ending June 30, 1917, in southeastern territory a major portion of the traffic moving between principal commercial centers traveled on mileage tickets, as illustrated by the following: Between Jacksonville, Fla., and Washington, D. C., 85 per cent; between Cincinnati, Ohio, and Tampa, Florida, 95 per cent; between Tampa, Florida, and New Orleans, Louisiana, 80 per cent; between Washington, D. C., and New Orleans, Louisiana, 93 per cent; between New Orleans, Louisiana, and Jacksonville, Florida, 60 per cent; between Louisville, Kentucky, and Memphis, Tennessee, 68 per cent; between St. Louis, Missouri, and Memphis, Tennessee, 47 per cent; between Memphis, Tennessee, and Vicksburg, Mississippi, 50 per cent; between New Orleans, Louisiana, and Memphis, Tennessee, 60 per cent; between Washington, D. C., and Raleigh, North Carolina, 53 per cent; between Cincinnati, Ohio, and Raleigh, North Carolina, 72 per cent; and between Washington, D. C., and Savannah, Georgia, 71 per cent. These points are in southern territory, because the data were compiled several years ago by the southeastern carriers for use in a proceeding before this commission. I use the data here because it is available. During the same time interchangeable mileage tickets were in use in central freight association territory. The percentages there did not run as high as the foregoing percentages in southeastern territory because the reduction in the rate obtainable by use of the books was quite material in southeastern territory, was more than in central freight association territory.

From the foregoing it is apparent that any reduced rate mileage or scrip ticket will practically supersede the normal one-way fares between all commercial centers of the country, materially reducing the present aggregate revenues which do not now meet the necessity of the carriers, nor the expectation of the commission from a revenue standpoint in their recent general rate investigation.

Another inequitable and discriminating feature of a reduced rate scrip or mileage ticket would be that in view of the long distances covered by journeys in this country, under almost any priced book so far suggested, it would be possible by the use of a scrip book, and with practically the same initial investment, to accomplish a one-way journey between two given points at a less cost than by purchase of a regular one-way ticket, this producing either a discrimination or a reduction in the one-way fare. The lower the price

of the book, the more cases of this kind would be produced. The cost of handling passengers on reduced mileage or scrip tickets will exceed considerably the cost of performing service for a passenger paying the normal fare and using the ordinary form of one-way ticket, and it is not clear how it can be justifiably concluded that, when the present normal basis fare has failed to produce the results anticipated by previous decisions of the commission, a mileage or scrip ticket sold at a fare below such normal basic fare per mile can be construed as either just or reasonable.

It has been alleged that carriers would derive substantial benefit from the use of the money paid in advance for mileage or scrip books, on which service would not be performed for a considerable time after purchase. A fund created in this manner would be divided into comparatively small totals among the large number of selling carriers. These sums would be constantly changing balances, subject to innumerable withdrawals on account of claims for partially used tickets returned by purchasers for redemption, and subject to hundreds of monthly settlements between roads for coupons of books honored by foreign roads. Of the total mileage revenue only a comparatively small per cent would remain constantly in the possession of the carriers as a daily average balance. In view of the foregoing considerations it must be apparent that the contentions with respect to this feature have no substantial merit.

It has been uniformly recognized by the railroad managements since the inception of mileage tickets that they were the most pernicious and unbusinesslike form of transportation in use, because of their discriminatory character and susceptibility to all kinds of irregularities and manipulations. It was impossible for various reasons for the carriers as a whole to abolish the use of mileage tickets, nevertheless there was a constantly growing restriction in their use to the extent that it was within the power of the carriers to so limit them. Conditions changed when the carriers were operated as a unit by the United States Railroad Administration, and recognizing the discrimination and irregular manipulation of mileage tickets, the carriers were ordered to discontinue them.

The United States Railroad Administration having accomplished during the period of Federal control what the carriers themselves were unable to accomplish prior thereto, the carriers did not, upon the return of the properties to private operation, reestablish the mileage ticket at a reduced fare, and are strongly opposed to it at the present time.

197 Any reduction in the basic fare which may be imposed upon the carriers through the installation of a mileage or scrip ticket below the normal fare will deplete the present passenger revenues, and it is the consensus of views that a reduced-rate mileage or scrip ticket will not increase the traffic to an extent offsetting the reduction in revenue.

In 1907 the legislature of a number of Western States passed what are commonly known as "Two-cent fare acts," reducing passenger fares from three cents to two cents per mile. That is about 1907. Some were later and some were earlier. In the case of one large western railroad passenger fares were reduced in 1907 from three cents to two cents per mile on 75.79 per cent of its total mileage. Notwithstanding the reduced fare, the total number of passengers carried during the fiscal year ended June 30, 1908, increased only 2.16 per cent over the number carried in the preceding fiscal year when the basic passenger fare was three cents per mile.

The evidence of this character necessarily is largely fragmentary. There has never been any considerable volume of data of this character, to our knowledge, prepared.

In April, 1914, the passenger fares on the same lines in South Dakota were reduced from three cents per mile to two and a half cents per mile, a reduction of 16.16 per cent. Notwithstanding that substantial reduction, the number of passengers carried one mile intrastate in South Dakota for the three months immediately following the reduction decreased 3.42 per cent, as compared with the corresponding months in the previous year in which a rate of three cents per mile was in effect. These lines were the Chicago & Northwestern, which has 1,230 miles of railroad in South Dakota out of a total of 4,131 miles in that State.

198 Further substantiation is furnished by the experience of one of the southeastern carriers, the Louisville & Nashville, which operates 180 miles of railroad in Illinois out of a total of 12,662 miles in that State. In Illinois passenger fares were reduced from three cents to two cents per mile, effective July 1, 1907, but the operations of the carrier in question for the last six months of the calendar year, 1907 (the first six months after the reduced rate became effective), compared with the last six months of 1906 (when the rate was three cents), showed that while the number of passengers carried in Illinois increased 7.13 per cent, there was likewise an increase in the number of passengers carried by that same carrier in other States where the passenger fare had not been reduced; that is, in Tennessee, an increase of 19.71 per cent; in Alabama, 9.82 per cent; in Georgia, 23.67 per cent; and in Florida, 14.21 per cent.

Using the experience of this same carrier for further illustration, passenger fares on its lines in Alabama were reduced from three cents to two and a half cents per mile, effective June 1, 1909, but its fare in Georgia remained at three cents per mile. Comparing the nine months' period ended February 28, 1910, with the nine months' period ended February 28, 1909, the number of passengers carried by it in Alabama showed an increase of 12.52 per cent, while in Georgia, with no reduction in the basic rate, the number of passengers carried by it increased 13.45 per cent and the revenue results for these same periods showed a decrease of 1.35 per cent in Alabama and an increase of 12.24 per cent in Georgia.

The Louisville & Nashville has 999 miles of railroad in Tennessee, 1,275 miles in Alabama, 215 miles in Georgia, and 246 miles in Florida. The total railroad mileage in these States is: Tennessee, 3,791 miles; Alabama, 4,981 miles; Georgia, 6,303 miles; and Florida, 4,056 miles.

199 The Louisville & Nashville in Illinois might not be as complete as we would like to make it, but we think it is typical of what will happen under identical conditions, or under conditions where there will be a reduction such as is sought here. I think it would practically reflect the reduction as to all the roads in Illinois, even though it might not occur on every road there. That is just conjecture, but I think it would be reasonably typical. We picked out that road because it was the only road that had compiled data of that character. They had occasion to compile that data some years ago, and we used it because it was available.

Possibly it would not be fair to base a conclusion upon the statement as to three months in South Dakota unless this statement clearly indicated the condition in that State for a period of time that could be averaged, but we produced the best we had available at the time of the preparation of the report. I do not know what months the report covered when I say the three months following the passage of this act, because I do not know the date when the law became effective.

The three months used in the South Dakota example were the three months immediately following the rate reduction. They were not selected for any particular purpose, but the information was given because it had been compiled some years ago, and was adopted here in our report as affording the commission the most information that we could contribute in connection with this matter. We produce the best we have available.

If mileage tickets at a special reduction are sold to the general public, past experience demonstrates that theatrical companies, circuses, concert companies, bands, and other public entertainments and other organized traffic will demand like special class legis-
200 lation for their transportation. Wherever a reduced mileage rate prevailed, the traveling public to a considerable extent could not be convinced that the same basis should not prevail for all regular passenger travel. The pressure was always for a downward revision.

The carriers have repeatedly asserted that a reduction in the basic fare through the sale of reduced rate mileage or scrip tickets, or otherwise, would not appreciably stimulate traffic. An outstanding proof of this is furnished by the withdrawal of the war tax of 8 per cent of the transportation charges, effective January 1, 1922. The cancellation of this charge was equivalent to making a horizontal reduction in passenger fares on all carriers in the United States, but, instead of stimulating traffic, the passenger revenues for 1922 will show a decrease of approximately \$82,500,000, based upon the decrease already shown for the first six months of 1922.

The testimony of the carriers would be incomplete if they failed to call particular attention to what they consider one of the most important phases of this whole question, namely, discrimination. Any form of mileage or scrip ticket at a reduced fare will discriminate against and unduly prejudice the interests of eighty per cent of the traveling public, assuming that only twenty per cent will travel on mileage or scrip tickets. Such tickets, sold at a discount, would be used by those best able to pay the normal fares. The farmer, artisan, school-teacher, clerk, laboring man, and other casual traveler would not, on account of their infrequent trips and the price involved, buy mileage or scrip tickets. The commercial man, who is out on business, earning his living in that way, and the business man and others making frequent trips between commercial centers can afford and would purchase mileage or scrip tickets, thus saving a substantial difference in fare, while the casual traveler would pay the full one-way fare when traveling between the same points on the same train and in the same car.

201 The cost of preparing and printing a \$90-book to-day runs, according to the number ordered, from 40 to 60 cents apiece.

Cross-examination:

I do not know of any wholesale principle in the passenger business. The commercial travelers in the hearings have stated that the average distance traveled per day is about 50 miles. At 3.6 cents per mile, that is about \$1.80 per day. Where the wholesale principle comes in there, we are unable to determine. \$1.80 worth of transportation a day is an average. It is not a quantity proposition in any sense whatever. I can not point out to you a class of travel which might be compared to the wholesale principle as applied to freight.

The commutation fare produces a certain per car return, day in and day out. It is an adequate and satisfactory return, and affords the carrier adequate compensation therefor, and is a thoroughly defensible practice.

A mileage ticket at a reduction draws away from the normal one-way business. It does not stimulate to an appreciable degree. A ticket sold at a tourist fare is what the passenger representatives would term a created business. It is new business that they would not otherwise derive. It adds to the passenger revenues, rather than detracts from them, and there is a great difference as between the mileage, reduced rate mileage ticket, and the ticket sold at a reduction to the tourist.

Excursion tickets may be regarded as a discrimination, but in view of the fact that it creates new revenues, it would not be considered, from my viewpoint, as undue discrimination or unjust discrimination and the more revenue of that character that the carriers can put in their cars, the more profitable it is for them, which is not true of the mileage. The more mileage business we do, the more we take away from our full normal fares.

Furthermore, the mileage ticket is sold to a preferred class, a well-to-do class. They must be well to do, because of the fact that the advocates urge a book of 3,000 or 5,000 mile denominations, which requires an expenditure of \$100, \$125, or \$200 at one time, whereas the tourist tickets are sold at a nominal rate, frequently as low as two and three and four dollars, and anybody can take advantage of them. There is a wide difference as between the two classes. One should not be urged as a reason why the other should be granted.

The excursion ticket creates business because the passenger would not travel if he did not have the lower fare. I think a lower script book fare for regular movement on trains would not create business.

The experience which we have cited here shows to the contrary. You had it here when your 8 per cent war tax was taken off that transportation on the first of the year, and, as applied to the traveler as a whole, the business which is constantly moving—and which goes anyhow, to a very large extent—it does not create the additional volume of business as in the case of the summer tourist tickets and excursion business.

The ten-ride commutation ticket and the family commutation ticket all add to the daily average travel which produces that return on the carload service which we have previously alluded to. It is not as frequent as the daily passenger, but a twenty-five-ride ticket does produce averages which enable the entire commutation business to make a satisfactory net return.

We make no contention to the contrary of the statement that 85% of the traveling men are on the road every month in the year.

203 WILLIAM P. ROSE, a witness called by respondents, testified:

I am auditor of passenger accounts, Southern Railway Company, Washington, D. C., and have been since August, 1918. I entered the railroad service in 1886 at Richmond, Va., with the Richmond & Danville Railroad Company, now the Southern Railway. Served as clerk in various positions in the passenger accounting department until April, 1899, when I became chief clerk and remained in that position until August, 1918.

It is estimated, as shown herein, that the carriers would be burdened with an additional accounting expense of \$1,680,000 per annum if a reduced rate mileage or script book were placed in effect.

It has been the endeavor of the carriers for a great many years to equip their agencies with such simple forms of passage tickets to avoid inconvenience and delay to the passenger at the ticket window and to facilitate the collection of transportation on trains. In carrying out this policy agents generally are provided with card tickets with printed destinations to all points where the sales justify. To-day ninety per cent of the traffic is handled on this form of transportation, which affords the greatest measure of protection against possible loss of revenue, accomplishes the object as set forth above, and produces the utmost simplicity in accounting from every standpoint.

204 Card tickets as they come from the printer are ordinarily put up in packages of 250, and agents are often furnished with several thousand of those to a given destination at one time. For the convenience of sellers the cases containing card tickets are placed adjacent to the ticket windows, and the sale of this form of transportation is quite simple, the ticket being quickly extracted from the case, stamped, and handed to the passenger while the fare is being collected, and the transaction is closed. The daily record of the sales is based on the commencing and closing numbers, and in the same way the agent at the close of the month accounts for the entire sales in his report to the audit office as a single item; that is, reporting the commencing number at the beginning of the month and the closing number at the end of the month, the total number sold, the rate, and the amount.

In honoring a reduced rate scrip book at the ticket window there would be an entirely different procedure. It would be necessary to begin with for agents to be supplied with a distinctive form of ticket for this purpose, on which the agent would write the destination, or have separate printed forms where the traffic justified, show the initials of the issuing line, the number of the scrip book on account of which issued, stamp, and before handing the scrip book to the passenger make detachments of the required number of coupons from the scrip book, computed by adding the tariff rate to the lowest numbered coupon left in the book, and severing the detachment at the amount so found, with a possibility of error in computation.

205 On interline tickets, which would also be of a distinctive form, it would be necessary for the ticket seller to show the number of scrip book on each coupon and contract of ticket. The passenger is required to place his signature on the back of the detachment, which the agent must compare with the signature on the contract of the book, the number of the passage ticket is endorsed on the detachment, which is stamped and pinned to agent's stub of ticket for use in preparing office record and monthly report to the accounting department.

With regard to the latter feature, the agent is required to report each one of these scrip exchange passage tickets as a single item in order that he may report in connection therewith the number of the scrip book on which it was issued, so that each of the detachments may be verified when the agent's report is received in the audit office. Just so much more complication is added to these transactions when a passenger presents two or more partially used scrip books, from which he desires to have detachments made for the passage ticket, or where part scrip and part cash are tendered.

All of the foregoing is not necessary in the handling of the present form of scrip, except as to making the detachments, as no reduction is afforded from the full tariff rates, regular forms of tickets are used, and the scrip detachments in the aggregate are treated in the agent's account the same as cash.

The impracticability of using the regular forms of tickets to be issued in exchange for reduced rate scrip should be readily apparent from the illustrations that are given, as, for instance, this would at once have the effect of disorganizing the consecutive numbers of

the card tickets that are now sold for cash at a uniform rate, 206 and so reported, while the ticket issued in lieu of scrip would

be sold at a lesser rate; furthermore, provision must be made for the reporting of the scrip detachments in connection with each ticket issued, many of which are covered by both scrip and cash, and as a protective feature the conditions of a scrip exchange passage ticket must contain the provision that it would not be accepted unless presented with scrip book to correspond with the number that has been placed on the passage ticket by the agent, and must also have space for signature of passenger to be taken on train.

In connection with the sale of a reduced rate scrip book, which obviously must be nontransferable and bear some protective features, it is pointed out that this would consume a great deal more time than the sale of the ordinary transferable scrip book that is now in effect.

The foregoing explains the additional work of a ticket seller and in accounting for the sales to the audit office, to which there would be added much accounting work for traveling auditors in checking agencies, and for the agents in keeping record of the special forms of scrip exchange passage tickets that would be necessary for this purpose.

Experience has proven that where a reduced rate form of scrip or mileage book is in use the additional work imposed on ticket agents has made it necessary for the carriers to increase their selling and accounting forces at many depot and city ticket offices. Allowing that additional help would be required at, say, 300 agencies throughout the country, and there would be an average of two clerks, 207 say, at \$150.00 per month, or \$3,600.00 per year, this expense would run up to \$1,080,000.00. Great as is this additional expense, the proper operation of trains will not justify the general acceptance of mileage or scrip by conductors.

The foregoing is predicated on the plan of having the scrip exchanged at ticket offices and honored on trains only out of non-agency stations and where ticket offices are closed. The same security is not afforded under an arrangement which permits of practically unrestricted use of scrip on trains, in which case the burden of the work falls upon the conductor.

When honoring passage tickets issued in lieu of reduced rate scrip on trains it is necessary in order to carry out the protective features for the conductors to require the passenger to affix his signature in space provided on such scrip exchange passage ticket and compare same with passenger's signature in the scrip book, and also see that the number of the exchange ticket corresponds with the number of the book and satisfy himself that the scrip ticket and the book are in the hands of the rightful owner.

When scrip books are presented for transportation on trains conductor is required to make detachment, take passenger's signature on the back thereof, compare with the signature in the book, and endorse the detachment to show the stations "from" and "to," train number, and date honored. This applies locally within conductor's run. In order that the accounting may be properly conducted, the scrip detachments lifted by conductors can not be treated the same as ordinary cash fares but must be reported separately, item for item, so that the reduction from full tariff rate may be dealt with in computing the revenue in the audit office. Travel on standard fare tickets simply involves the collection of a large number of card tickets, under which arrangements no less than five passengers are very often handled in the course of a minute, while on the other hand it would often consume two or three minutes for the handling of a single passenger transported on scrip locally. Furthermore, conductors are not equipped with facilities for the proper protection of their scrip collections against loss or theft, nor could they be held responsible for loss in the same way that a bonded agent could be.

When presented on trains there are many small detachments of scrip which, combined with the flimsy texture of the paper, makes it almost impossible to guard against loss. In event that foreign lines' scrip is lost by the honoring carrier, this is precisely the same as losing so much money, as the only possible way for the honoring carrier to realize on such scrip is to present it to the issuing carrier for settlement. This is not the same in the case of a lost coupon for a foreign road's interline ticket, as these are settled for currently based on the sales and the coupons are retained in the collections of the honoring carrier.

It is a well-recognized fact that the handling of reduced-rate scrip or mileage detachments by conductors has the effect of slowing up the collection of transportation to such an extent that carriers in various parts of the country found it necessary in the past to put on an additional conductor or collector on some trains in order to protect themselves against loss of revenue due to the inability of one conductor to make all collections and properly attend to the safe operation of the train. In this connection attention is also directed to the complaints of conductors on account of being burdened with the rendering of mileage or scrip reports, with claims for overtime due to the fact that this extra duty imposed upon them makes it necessary for them to put in a great deal of time for this purpose after completing their runs. This was under conditions that were far less exacting than a nation-wide reduced rate mileage or scrip ticket would produce if made good for general use on trains.

As explained above, card tickets represent approximately ninety per cent of the total number of tickets sold, those for a given destination being included in the agent's monthly report as a single item and the accounting is quite simple. The commencing number is

checked against the closing number of the previous month, the subtraction is made from the closing number of the current month to determine the total number of tickets sold, with one extension of the rate to prove the correctness of the amount. Later, at the convenience of the audit office, the tickets that have been assorted in station order in the meantime are examined to see that there are no numbers in the collections other than those reported by the agent to detect any out-of-order sales.

Scrip exchange passage tickets must be checked at once in order to separate the scrip detachments of other roads' issues, which must be billed for. This means that it is necessary to verify the correctness of each scrip detachment, also balance cash, if any, in connection with each single item as reported. The same thing applies to the daily trip reports received from conductors. After the scrip detachments have been checked and separated from the stubs of tickets as issued by agents and conductors, the detachments are assorted as to issuing roads and those issued by the honoring carrier are filed in envelopes under the consecutive number of the book to guard against the possible misuse of scrip or the use of fraudulent scrip books, as well as for the purpose of investigating claims for overdetachments or otherwise.

The scrip of other companies' issues is listed on statement in detail, showing the opening and closing number of each detachment in order to compute the value of the total scrip of a given line's issue honored during the month, such statement being forwarded to the issuing line and settled for through the medium of interline ticket reports. In order to complete the accounting it naturally follows that the receiving carrier must check these detachments against the statement to insure against making an overpayment due to possible error in the statement. Such statements which are exchanged monthly between the many carriers handling mileage and scrip would be enormously increased, aggregating hundreds of thousands of sheets and involving millions of entries. After the detachments are checked by the receiving carrier they are filed with others of their own issue honored on their own line.

In the case of interline exchange passage tickets it is necessary for the carriers to make a separate apportionment of the revenue on this account, and in consequence maintain a separate set of division slips by reason of the fact that the fares between given points are correspondingly reduced from the normal fares, for which the carriers regularly have a set of division slips. Much added confusion results from part scrip and part cash are collected for the exchange passage ticket, as when this takes place the net fare varies according to the number of scrip coupons and the amount of cash collected for each transaction covering exchange passage tickets between the same points.

Incidentally it might be mentioned that the total apportionment on account of the scrip is charged to an account ordinarily entitled

"Scrip outstanding," in which the sales of the scrip books by the initial carrier have been set up in suspense from the agent's monthly reports, which applies in like manner to the values of scrip honored for local trips by agents and conductors in compiling the revenue figures.

The audit office would be obliged to take over the extra work in conducting their ticket stock records, due to the additional forms of scrip exchange passage tickets with which the agents would be supplied, also the conductors' scrip exchange train checks, and it is estimated that there would be an increase of expense to the extent of fifteen or twenty per cent on this account, exclusive of the work in the passenger department in handling requisitions, invoicing tickets, etc.

212 The redemption of partially used scrip books, partially used scrip exchange passage tickets, and claims for overdetachments that are handled in the audit office, or with some carriers through the general passenger department, would place such additional work upon the carriers, to which might be added adjustments of over and under charges developed in the checking of agents' and conductors' reports and correspondence incident thereto.

If it should be held that in the redemption of a partially used scrip book, honoring carriers who performed service on the various detachments found in the collections are entitled to a proportion of the difference between the value of the transportation furnished at the scrip rate and value of such transportation at the normal fares, there would be endless confusion in audit offices of the selling carrier making such adjustments.

Assuming for this purpose only fifteen per cent of the traffic would be handled on a reduced rate form of scrip book, it is estimated, based on past experience, current performance statistics, and increased number of operations in placing check on scrip or mileage detachments, that a carrier now having, say, \$25,000,000 of passenger revenue per year would require the services of at least ten additional clerks in the accounting department. On this basis it would mean that the carriers throughout the country would be obliged to engage approximately five hundred additional clerks, which, if extended at an average salary of \$1,200.00 per annum, would bring the total increased expense to \$600,000, which would be substantially the same regardless of whether the scrip generally were honored for transportation on trains or exchanged at the ticket offices. These figures are considered very conservative.

213 Detachments from scrip books actually in use are sometimes little pieces just an inch, and other pieces very much longer. A small detachment might possibly represent an interline account.

We would have to adopt some method by which we would send our statement and the lifted scrip to the road which issued it, and in doing that we would have to incur expense to get it there. If it

were a small package we could put postage on it, of course, but that would not be possible with a large package. I would say that the larger packages would be sent by express for safety purposes. That would increase the cost.

I believe less than one per cent of the total passenger revenue is from use of the present scrip coupon ticket. During the period when mileage books at reduced rates were issued, the revenue from them, I think, was about 20 per cent of the total passenger revenue. In the southeastern territory there was a two-cent book and a two-and-a-half-cent book. Interchangeable mileage books were issued in the past because of pressure—that is, demand for them; people wanted them. The roads hoped to derive more revenue if these books were issued, but they did not derive as much revenue as they would have if it had been at full rates. I believe the sale of these mileage books at reduced rates did not stimulate traffic, but there are no data on that question.

I do not know from statistics whether there was more travel as a result of these reduced rates, so that, of course, I would not be prepared to say now if there were a reduced rate that traffic might be stimulated.

214 My idea is that if a mileage or scrip book is issued it will shift travel from the straight fare to the reduced fare. If they are made nontransferable, with all the safeguards that I have in mind, and issued at a reduced rate, I do not think that more people would use them than travel at present. The person that would travel on a straight ticket possibly would travel on one of these tickets. The tremendous overhead and clerical expense that I spoke of would result from the necessity of auditing travel on these tickets. A substantial percentage of the traveling public might buy these tickets. I estimate that about 15 per cent of the total traffic would be on mileage. I do not think it would stimulate additional traffic.

The reason why excursion tickets are issued is because they invite new business. I do not believe that the issuance of these scrip coupon books or interchangeable mileage books at reduced rates would have the same effect. Through tickets from New York to the coast, for example, at a reduced rate, are issued in order to encourage business; that is, to encourage anybody who wants to use them, the traveling public generally. When I use the word "business" I do not mean the merchant or the commercial traveler only; I mean the traveling public generally. The through ticket from Chicago to the coast and return, at a reduced rate, is issued to encourage traffic, not traveling salesmen only but of the general public.

Adjourned to Wednesday, Sept. 27, 1922, at 10 o'clock a. m.

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HEARING ROOM, I. C. C. BUILDING,
Washington, D. C., Wednesday, September 27, 1922.

The hearing was resumed at 10 o'clock a. m. pursuant to adjournment.

Present: Commissioners Meyer, Esch, Lewis, and Cox.

Present also: Chief Examiner R. E. Quirk, Dr. M. O. Lorenz, director of statistics, and Mr. A. Wylie, director of accounts.

C. A. Fox resumed the stand and testified further:

Further cross-examination:

Any form of a scrip or mileage ticket has always been considered by the passenger traffic officials generally as unsatisfactory. The present forms are particularly undesirable because of the wider latitude in the taking of baggage than would ordinarily apply to a mileage ticket of a type that they would consider protective, which would require the exchange of coupons at the ticket office in advance for an exchange train ticket, so that the baggage would always be coincident with the movement of the passenger, which is not the case today.

We make no reduction in passenger fares to theatrical, Chautauqua, and other similar traffic. We have no special rate for a trainload of passengers. There are no party rates. Party fares were eliminated during the period of Federal control and have not been reinstated.

We are not now giving special passenger rates to theatrical companies. They get certain privileges under our baggage tariffs 216 as to the movement of their paraphernalia. This privilege is confined to the particular class of travel described in the tariffs. It would include also Chautauquas and convention entertainments. They get certain baggage privileges, but no reductions in their fares.

Our conclusion that any form of reduced mileage scrip ticket will result in a substantial reduction in passenger revenue is predicated upon the thought that we do not believe that it would stimulate travel to the extent of creating more revenue to the roads.

We have never compiled any statistics showing the number of passenger-miles carried during the period that mileage books were in vogue in many of the States and Territories. There have been no statistics of that character compiled in a detailed form as a consolidated compilation. We have the individual experience of the carriers operating in certain sections of the country, showing in times past the percentage of travel handled on mileage tickets compared with the total one-way business ranged from 18 to 20 per cent in New England territory as a whole; trunk-line territory, 20 per cent; southeastern territory, about the same per cent. That is testimony that has been given to me by passenger traffic officials as a result of their past experiences, and does seem to afford a very sound foundation upon which to reach deductions as to what would

happen in case a nation-wide interchangeable mileage ticket
 217 was introduced, good all over the country. Data is not available that would directly show either an increase or a decrease in the passenger revenue created by the use of these mileage books.

Not even in the case of the interchangeable mileage books previously issued by the railroads, according to our best information, was the purpose to stimulate travel or to secure additional revenue.

It is represented that the public are being deprived of a privilege they are properly entitled to, one that was extensively accorded voluntarily by the carriers over a long period of years; that in fact this has so become the accepted practice that it was a privilege which the railroads were not warranted in discontinuing. To deal in justice with this contention it is necessary to give the history of the mileage book from the early days of its use, beginning about 1868.

The mileage ticket was initially used largely, if not entirely, by the freight departments as a convenience or concession to shippers at a time when such favors were not in violation of law.

218 These books were sometimes given to shippers free, or sold for amounts ranging from \$5 to \$20 per book for a book of 1,000 coupons. It was the custom also in those old days for the railroads to issue annual passes to the larger shippers. These larger shippers employed in some instances traveling men, although the number of such travelers was very limited, indeed, compared with to-day. It was not the desire of the railroads that such annual passes should be used by other than the principal of the firm to which it was issued, and the mileage ticket served to take care of the traveling men of these larger shippers. The mileage ticket also enabled the carriers to extend shippers favors measurable to their freight shipments, which was not the case with annual passes where record was not kept of the trips. There was at that time considerable discontent on the part of the passenger officials, because in the early history of mileage books passenger service was performed on those books for the benefit of the freight departments, passenger revenue received for mileage tickets not being credited to the passenger accounts. In time, however, this injustice was recognized, and at least on some roads proper credit was given the passenger accounts from the freight revenues on mileage tickets furnished.

While in the early days an occasional mileage ticket was sold by the passenger department for strictly passenger use, that seemingly was the exception rather than the rule.

The mileage ticket also became a common form of compensation for advertising and continued as such until declared illegal as an interstate proposition.

In time also the mileage tickets were more generally and extensively adapted by the passenger departments to their own uses. It is desired, however, to stress the point that the mileage ticket was not at the outset an expedient for the passenger departments' own

uses, and that even at the beginning it was a form of ticket
 219 not looked upon with favor by the passenger departments. The
 use of mileage tickets having become so prevalent with the
 traveling representatives of big shippers during this period as a
 freight concession at a time when such practices were not inad-
 missible, there was no escape upon the part of the passenger depart-
 ments from according the same kind of ticket to other shippers and
 commercial travelers if they were willing to pay the rates regularly
 fixed therefor at that time. This form of transportation, therefore,
 was in reality a legacy to the passenger departments, as an instru-
 ment for passenger transportation, for which they were hardly
 accountable, and it can be realized that the same desires that existed
 on the part of the commercial travelers for a preferential form of
 transportation and the same demands and influences that are still
 encountered are measurably responsible for the origin and con-
 tinuation of mileage tickets, and that it would have been difficult, if
 not impossible, for the railroads to have discontinued them.

Upon the enactment of the interstate commerce law in 1887, how-
 ever, when it became illegal for the carriers and shippers to use
 mileage tickets in the manner described, it being required that a
 uniform rate therefor be charged, if issued, serious consideration
 was given by the executive officers of lines covering a considerable
 mileage in the United States to the discontinuance of mileage tickets,
 and resolutions were so introduced.

This indicates that even back in those days the carriers had no
 relish for the mileage book and desired to get rid of it. But it was
 apparently as difficult to allay the demand for preferential rates
 for travelers as it is to-day. In any event, the tickets were con-
 tinued on sale throughout the country and in various denominations.
 They were utilized so extensively, and the railroads suffered such
 losses in revenue from the manner in which they were scalped by
 professional ticket brokers, hotel porters, omnibus drivers,
 220 and a myriad of other manipulators, that the condition
 became practically unbearable.

About the year 1892 or 1893, to rectify these difficulties, a bureau
 was formed in Chicago through which all the refunds on the covers
 of such books in a given territory were made payable through that
 bureau, after signatures had been examined on mileage strips sent to
 the bureau to confirm the use of the books by the original purchasers.
 Notices were served upon the ticket scalpers, whose stock in trade
 consisted very largely of mileage tickets, that they should turn in
 their stocks of mileage books and receive the value thereof, or suffer
 the consequences of the possibility of the loss of the rebates.

These facts are given to show that in those early years efforts were
 being made by the passenger department to minimize the ill effects
 and leakage inseparable from mileage tickets.

In 1896 the carriers in what is known as Central Passenger As-
 sociation territory also took the situation in hand, and, upon the pe-

tion of the commercial travelers, issued a 5,000-mile photographic ticket, sold at a flat rate of \$100, or 2 cents a mile, good over substantially all carriers in that territory, at a time when the passenger fare was normally 3 cents per mile. The ticket, however, was not popular with the commercial travelers, although it conformed with their petition at that time. The average sales per month were not much in excess of twenty books, which is largely accounted for by the fact that the individual forms of the carriers were also continued in use, sold at a rate of \$20, some of which were good over several connecting carriers.

As a result of the desires and influences of the commercial travelers, and also as a protective measure against the manipulation of the individual ticket previously described, a 1,000-mile book, interchangeable over all lines in that territory, was placed on sale. When introduced this book was sold at \$30, \$10 of which was refunded on surrender of the cover, if the signatures in the bureau's possession indicated exclusive use by the purchaser.

In 1906 or 1907, when the States commenced to pass the 2-cent fare laws, the Central Passenger Association books were restricted in use to interstate passage, no deduction in fare being made to holders of mileage tickets traveling intrastate. The amount the purchaser was required to pay at the time of the purchase as refundable on the cover was reduced to \$5, and ultimately to \$2.50. It is also true that the cost of the mileage in the 1,000 ticket had been increased from 2 to 2½ cents per mile. By the time the carriers were taken under Federal control in January, 1918, the use of the book had become so circumscribed because of being confined to interstate passage, and the fact that the rate per mile had been increased to two and a quarter cents a mile, when the interstate fare generally in that territory was about 2½ cents per mile, that the sales of the book had practically fallen off to nothing.

On October 20, 1917, a petition was filed with the Interstate Commerce Commission on behalf of the southeastern carriers requesting authority to discontinue the 2,000-mile form book and place on sale an individual mileage book containing 2,000 coupons (instead of 1,000) to be sold at 2½ cents per coupon, or \$45. That petition contained a comprehensive statement of the interchangeable mileage book situation as it then and previously existed in the southeastern territory, as well as in the territories of other associations, and cited illustrations showing the great percentage of the total traffic between numerous important points which was being handled on mileage.

The Interstate Commerce Commission held a formal hearing in December, 1917, upon this petition, and on February 4, 1918, issued Fifteenth Section Order No. 320 declining the request in so far as it related to the substitution of a 2,000-mile individual
222 book in lieu of the 1,000-mile individual book. Authority was granted to increase the rate on the 1,000-mile book from 2 cents per coupon to 2½ cents per coupon, and authority was granted

for the discontinuance of the interchangeable 2,000-mile form ticket, which particular form of ticket was withdrawn effective June 9, 1918.

Before issuing tariffs in accordance with this order of the Interstate Commerce Commission, it was deemed advisable to secure corresponding authority from the commissions in the several South-eastern States. Before the completion of this procedure, however, the United States Railroad Administration ordered the cancellation of all mileage books sold at a reduced rate, and on June 10, 1918, interchangeable individual mileage books of the denomination of 1,000 coupons were placed on sale in the Southeast at \$30 per book, or 3 cents per coupon.

Mileage experiences somewhat along the lines of those described occurred in different regions throughout the country, all of which is related to show that the tendency, effort, and desire of the carriers was to restrict, so far as they considered it practicable to do so, the use of these books, because it has been the experience from the beginning that they are an unbusinesslike, unjust, and expensive form of ticket to handle and account for, and that there are revenue losses occurring in connection therewith which are not experienced in the use of one-way tickets.

When the carriers were placed under the supervision of the Government in January, 1918, all forms of mileage tickets were discontinued. It must be assumed that those responsible for the affairs of the railroads in the hands of the Government thoroughly went into the merits of this question before taking this action, and that the Railroad Administration was unwilling during the period it was responsible for the revenues of the carriers to be responsible for the

continuation, even for a short period, of a form of ticket having such a record as the one described above. Scrip coupon books of \$15, \$30, and \$90 denominations were then placed on sale, affording no reduction from the normal fare. It is understood they were intended largely to relieve the congestion which was occurring in some of the larger city and depot offices throughout the United States during the abnormal war activities and also to afford the commercial travelers the additional convenience and advantage of boarding trains for short and frequent jumps in covering their territory, where it would be possible for them to utilize the book to the extent of the tariffs held by conductors.

As a summary of the foregoing, the point is made that a practice and a custom that was practically foisted upon the passenger departments of the carriers throughout the country, and which it has been impossible for them to escape except through the wisdom of the United States Railroad Administration as above explained, should not constitute a practice of a character which the carriers believe warrants continuance of the mileage tickets, because of the methods of the past.

I have no direct information or figures to show whether or not loss of revenue resulted from the issuance of mileage books at re-

duced rates. It would be practically impossible to compile data of that character. I would not know how to go about it.

What I said meant that the Government discontinued the use of mileage books because it recognized the discrimination and irregular manipulation of mileage tickets. I think that was more likely the reason than the desire to curtail travel. However, I do not and could not know what the reason of the director general was.

224 I do not believe that the use of a photograph on a scrip ticket would entirely obviate the danger of scalping. If the photograph were accompanied by the provision that the ticket should first be presented at the ticket office for an exchange ticket, that would minimize it to a considerable extent. If there was a further provision incorporated in the ticket including the penalty clause of the new law, that would give the carriers a reasonable degree of protection. I think it would be highly important that the provision be incorporated requiring the holder to exchange the scrip for an exchange ticket. If all of these provisions were adopted I would consider a photographic form of ticket interchangeable for coupons at stations before the passenger boards the train reasonably protective.

The commercial travelers in their conferences with the railroads in 1920 and in the hearings before the Senate and House committees contended that the business stagnation then existing was, in a measure, due to the high passenger fares which prevented the mercantile interests from sending their men out on the road. As an evidence that this was not the fact, and as explaining some of the true causes for the falling off in the total volume of passenger traffic, particularly short-haul traffic, during the year 1922, the following facts are presented:

It is first pointed out that the carriers share, with other industries, the effect of general business conditions, whether they are favorable or unfavorable. More specifically, however, the most direct cause for the falling off in passenger traffic has been due to the new and growing competition of hundreds of bus lines which have been built up in every State of the Union, and the millions of privately owned automobiles.

225 I have here a map recently prepared displaying the extent of automobile bus lines in the States of Ohio, Indiana, and Michigan (Lower Peninsula) which is reasonably typical of all sections of the country. To a very considerable extent in those States where there is a railroad between two points of any consequence there will be found an improved highway either paralleling it or projected, and these highways are as a rule used as fast as built by motor-bus lines. These highways are to a very large extent built and maintained by taxes or by bond issues, and the largest contributors to their cost and maintenance are the railroads. The busses use these highways with flexible equipment and operate more frequent schedules than the carriers, pick up business along the

highways, depriving the carriers of a very large percentage of their local business.

The fares of the bus lines are in some cases lower and in other cases they are the same or higher than the rail fares, but regardless thereof they are a controlling factor in handling this short-haul traffic for the reason they pick up and deliver passengers, taking them from the main streets of the originating points to the main streets at destinations, and the service is so frequent that it diverts traffic from the rail carriers.

Millions of individually owned motor cars also make inroads on the local and through traffic of the carriers, which has been lost for all time.

Instead of any prospective alleviation of these difficulties, the losses will undoubtedly from these causes continue to grow because of the vast amount of money being expended in every State of the Union in the improvement of the public roads.

For these reasons it is not believed a reduction in fare by means of reduced-rate mileage or scrip ticket would have the effect of
 226 restoring to the rail carriers any considerable volume of this traffic now handled either by bus lines or in privately owned automobiles.

This situation has been gradually growing with the development of the new roads. It started with the development of the roads and the growth of the bus lines. It is one of the greatest underlying reasons for the decline in passenger traffic.

I reconcile this statement with the sudden increase in traffic up to 1920 and the decline after 1920, on the basis that it represents the period following the war-time period, when we had a continuation of abnormal commercial activities, when the passenger revenues of the carriers were in a measure comparable to the commercial prosperity of the country. There was a further important factor in that the troops were being returned, and in very large numbers. These factors contributed to a very large extent to the passenger revenues at that time. The automobiles and bus lines had an effect, but it was not so apparent as it is now. It was a period of high commercial prosperity that continued after the war-time period for quite a while; also there were two million troops that were being brought back at the time, which contributed very largely to augment the revenues of the passenger carriers.

The merchants were trying to stimulate business. They were very largely stocked; they had to get rid of dead goods. The railroads have no dead goods; they are selling only one commodity, which they cannot afford to sell at a loss.

During the time when interchangeable mileage books were issued the reporting and accounting thereon was just as complicated
 227 and burdensome as I have explained here except confined territorially. The figure of about \$1,680,000 I gave as additional cost was stated with the idea that it would be explained in detail

by the accounting witness who was familiar with those expenses. I have no data as to what the cost was in the past.

I have no data to show whether or not the issuance of interchangeable mileage books in the past was profitable to the carriers. We have no facts and figures to show whether a loss of revenue would result now from the issuance and use of interchangeable scrip books at a reduced rate. What I have said on that point is individual opinion, the best judgment—that is, the consensus of views of the passenger traffic officials and myself.

I think the transportation charge is not the governing factor which keeps people from travelling on account of travelling expense. The hotel rates and other expenses are so much greater, in which there have been no reductions such as you have in mind, that the difference in the rate would not be the controlling item. It would be one of the items but it would not contribute very largely compared with the matter of hotel expenses and other expenses at destination.

At this moment I am unable to make any suggestion that would make it possible for the commission to draw an inference either way as to the effect the use of mileage books has had upon the revenue of the carriers using them. I do not at present know of any data.

Redirect examination:

My forecast that the reduced scrip ticket would not stimulate travel or bring the railroads additional revenue was made in the light of the facts included in my previous testimony as to the
 228 prior experiences of reductions; also the experiences of last January, when there was an 8 per cent reduction by the removal of the transportation tax; also the fact that when mileage tickets were previously used they represented approximately 20 per cent of the travel in certain considerable regions, sections of the country which would reasonably be typical of the whole. When I said there were no facts underlying this forecast I merely meant that we had no statistical data as to the effect of the inauguration of any particular mileage ticket on any particular line which enabled us to show from that experience that we suffered a loss in revenue.

In the statement which I have already made referring to these instances where there have been reductions I have not omitted any instances that in any way bore upon the subject. I have withheld nothing of that character which was available. What I have given was prepared at other times in connection with other matters that happened to be brought to our attention as possibly of value here. There was no special selection or preparation of this particular information.

Mr. BIKLE (representing carriers). If these applications for exemption could be treated as an appendix and independent of the formal record as to the primary issue, I should be very glad.

(NOTE.—It was agreed by all parties that all the applications for exemption, over 400 of them, which had been filed with the com-

mission, were unrelated to the lines of evidence suggested in the commission's notice of hearing (as stated in the commission's report, 77 I. C. C. 200, 201), should not be part of the docket in 14,104 proper, but dealt with in a subnumber, should be filed as an appendix to the proceeding and regarded as part of this record, that it would

not be necessary to call witnesses for each of the applicant carriers, that the statements of these carriers furnished yesterday would be received in lieu of testimony offered by witnesses, and that the evidence offered by the trunk lines be considered on the exemptions as far as appropriate, particularly as to truck or automobile competition, and the accounting costs and other costs.)

230 WILLIAM P. ROSE resumed the witness stand and testified further:

Cross-examination:

With reference to the time when mileage books were sold at reduced rates, I can tell you how much of the total passenger revenue was derived from their use, but I cannot tell whether or not their issuance and use increased or decreased the total passenger revenue.

When I estimated yesterday that the amount of transportation which would be carried on mileage or scrip books would be not less than 15 per cent, my estimate was based upon actual experience when the mileage books were previously in use. In some territory I believe it was found that it was 20 per cent, some 18, and some less, but to be very conservative we estimated that if the transportation on mileage should be 15 per cent of the whole then these certain things would happen.

During the year 1917 the total passenger revenue of the Southern Railway Company was \$24,303,182, of which \$3,460,894, or about 15 per cent, was derived from traffic using interchangeable mileage or scrip books at reduced rates. It took 28 clerks to handle the records on this \$3,460,894 and 175 clerks to handle the rest of the records on the total of \$24,303,182. If there had been no mileage or scrip books the 175 clerks could have handled all the records. If interchangeable scrip coupons tickets were issued now I believe more than 15 per cent of the total passenger revenue would be derived from them, because, being good over the entire country, they would be used more than the 1917 books, which had territorial limitation.

231 When the ticket was exchanged at the window, as it was at that time, except where the station was not open, or nonagency, the agent issued a train exchange ticket or passage ticket. Now, at the end of the month the agent made up a report, in which he listed all those things, item by item, and when that report was completed it was turned into the audit office with the stubs of the tickets he had issued, to which were pinned these mileage detachments. When they got into the office the first thing they did was to try to lock it up in fireproof safe, because if you didn't do it there

might come a fire overnight and destroy a lot of revenue. The first thing to do was to lock it up.

Then, as we had an opportunity, we had to check these out, item by item, count the mileage, and in many cases where they were cash, there was not sufficient mileage to take the man to his destination and they had to collect the difference in cash. There was a column on the report that showed the cash as well as the scrip. They had to be checked out, item for item, and verified. If there were any errors, of course, the matter had to be adjusted with the agent.

After that was done we had to segregate from the amount of mileage that which was issued by the foreign lines. Then that had to be listed on statements, item for item, showing the commencing number and the closing number of each detachment, the sum of all the commencing numbers and the sum of all the closing numbers, recapped, and one deducted from the other gave the value of that mileage listed. That had to be put up in a package and sent either by express or registered mail to the other carrier. We received in return a like statement. We had to check that up, check the detachments with the report, and if it was all right we entered it to his credit, and he drew for it with a draft.

232 The mileage books formerly issued by the Southern Railway were redeemable, but there was a certain number that was never presented for redemption. A man would carry around in his pocket a book with just a few coupons in it. He would not think it was worth while to redeem it. A great many people would lose the books, and in that way there was quite a little bit of mileage that was never redeemed. I haven't exact figures, but my recollection is that the road derived possibly \$5,000 or \$6,000 a year on unused and unredeemed mileage. I do not know how this would compare with other roads.

233 DAVID H. CLINK, a witness called by National Council of Traveling Salesmen's Associations, testified:

I am secretary and treasurer of the International Federation of Commercial Traveler's Organizations and chairman of its railroad committee. I appear here on its behalf and on behalf of the numerous organizations throughout the United States affiliated with it. Also on behalf of numerous manufacturing and jobbing interests and associations which I have named. The affiliated membership of the federated bodies is 676,000 members.

In view of the 33½ per cent discount voluntarily granted by the carriers in the sale of mileage books, interchangeable and otherwise prior to their discontinuance, we can only judge that to have been a just and reasonable rate. And considering the rates now in effect governing the sale of of tourists, summer and winter resort tickets, a discount of 33½ per cent from prevailing passenger tariffs would appear just and reasonable.

We recommend a scrip coupon ticket of \$100 denomination gross. Considering the fact that the average commercial traveler spends nine months of the year on the road, as against one day of the year on the part of the ordinary citizen, if you please, it would seem just

and reasonable to grant the traveling salesmen the concession prayed for. The proposed discount would only apply to the proposed denomination of tickets, thus protecting the local revenues of the carriers; and while the larger denominations are open to the public, discrimination is avoided. The more of such tickets sold the greater the source of revenue to the carriers, involving a larger investment of money in advance for transportation requiring on an average of four months to consume.

We earnestly urge a nontransferable ticket for this reason, believing as we do that commercial travelers are by virtue of their calling compulsory patrons and revenue producers in passenger traffic, and in fact equal freight solicitors for every line of road over which they travel, and in consequence entitled to a consideration not accorded the ordinary passenger unless participating in the purchase of the same denomination of scrip coupon tickets.

In summing up the situation, business, which includes the carriers, requires a stimulant, and the carriers, no doubt appreciative of that fact, brought home to them from a sadly diminished revenue in their passenger department, sought to apply the remedy by a radical reduction in passenger rates to far-off distant points, summer and winter resorts, and no doubt had the desired effect to a limited extent. They seemed to forget that the commercial traveler had been able up to the beginning of the World War to purchase mileage books interchangeable and otherwise at reduced rates. They appear to have overlooked or ignored the fact that excessive rates exacted were driving thousands of commercial travelers, particularly those selling on commission, into idleness, the employers of those on a fixed salary reduced to the lowest minimum their selling forces, and many employers have supplied their traveling men with automobiles in an effort to escape excessive railroad fare as a matter of economy.

A reduction in rates would reemploy thousands now idle and add additional thousands to the ranks of the traveling fraternity. The commercial traveler and employers ask for no special privileges, nor do they expect something for nothing. They do expect and should receive consideration commensurate with their enormous patronage.

Cross-examination:

235 The reductions made by the railroads to California points and on summer and winter resort tickets were some of them as low as 50%. The mileage tickets I speak of were generally interchangeable. We did have them confined to the Western Passenger Association and the Central, but eventually they were good on either one.

The Pennsylvania Railroad mileage ticket prior to Federal control was under a reduction of only 10 per cent. That is an isolated case.

I could not give you the number of commercial travelers of the 600,000 whom I represent who are idle at the present time. I could

only estimate from general correspondence. I think this mileage book would be very generally used. I think the estimates of 15 or 20 per cent given by previous witnesses are low. I think it would be easily 25 per cent, and it might be higher than that. I haven't figured what a 33 $\frac{1}{3}$ per cent reduction would mean on 25 per cent of the railroad's passenger revenue.

JOHN F. SHEA testified:

I reside in San Francisco, California. I appear on behalf of the American Hotel Association. I have been in the hotel service for the past 22 years and have been connected with hotels in Texas, Kansas, Colorado, New Mexico, Arizona, and California. I am secretary of the Northern California Hotel Association and of the San Francisco section of that association and a member of the executive committee of each, member of board of control of California State Hotel Association, secretary and a director of Western States Scenic Association, member of executive council of American Hotel Association and chairman of its travel bureau committee.

I am of the firm opinion, as also are my associates, that any
236 reduction in passenger rates, either by the use of an interchangeable scrip book or tickets, of any kind, immediately develops business, and there is a constant and immediate reaction felt in the hotels of the United States.

The hotels of the United States are particularly situated in that manner, that the slightest imposition put on travel, or the loosening up of travel, immediately is felt by them.

Within the last three months I bought a summer tourist round-trip ticket from San Francisco, California, via Chicago and Boston, to Halifax, and return via Montreal, Prince Rupert, and Seattle, to San Francisco, a total distance of 9,475, for \$195.04, or at the rate of 2.05 cents a mile. Such tickets were on sale daily from May 25 to August 31, 1922, good for return trip until October 31, 1922. To attend this hearing I bought a 9-months' round trip ticket from San Francisco, Calif., via Chicago and New York, to Boston, and return via Chicago to San Francisco, a total distance of 7,454 miles, for \$209.12, or at a rate of 2.8 cents a mile. Such tickets are on sale every day in the year and good for return trip within 9 months of date of sale. At the same price I could have bought a ticket via New Orleans to Boston and return via Chicago and New Orleans, which would have figured only 2.4 cents a mile.

On behalf of the American Hotel Association I wish to enter vigorous protest against the six-months' feature and the \$200 denomination of the scrip book, as I am of the opinion, as are my associates, that such would not be a stimulant to travel.

Cross-examination:

There are many men not commercial men, men in small lines of business, and men like myself in business, who would like to
237 take advantage of a scrip ticket if it were available. Before the war, when it was available, I always had one.

The Hotel Association have a selfish interest in the development of travel. There is no question that tourist fares have operated to stimulate travel between the East and the West. We would not be able to exist without them.

In giving these illustrations of the trips I have taken, or might have taken, I came by the most advantageous way. There may have been shorter routes. The fare that I paid may have had to meet fares by shorter routes.

I have no idea what portion of traffic would move on reduced tickets if this reduction were granted, nor do I know how much revenue loss the carriers would sustain, nor have I any idea how many passengers would be diverted from the straight normal fare to this lower form of ticket. I am of opinion, however, that whatever is diverted would be made up by the increased number that would be bought. That opinion is absolutely without any preliminary idea as to those other factors. I realize that this ticket might be used for frequent short trips of relatively short distance.

The present depression in travel may be attributable in a way to the railroad fare, and to other causes, too. The other causes I suppose are the higher cost of living, different things that go to make things cost more, increased cost in all lines. I think there would be a stimulation of travel if only the railway fare were reduced, but I would not say that that is the controlling factor.

Adjourned to Thursday, September 28, 1922, at 10.30 o'clock a. m.

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HEARING ROOM, I. C. C. BUILDING,
Washington, D. C., Thursday, September 28, 1923.

The hearing was resumed at 10.30 o'clock a. m., pursuant to adjournment.

Present: Commissioners Meyer, Lewis, and Cox.

Present also: Chief Examiner R. E. Quirk, Dr. M. O. Lorenz, director of statistics, and Mr. A. Wylie, director of accounts.

AARON M. LOEB, a witness called by National Council of Traveling Salesmen's Associations, testified:

I am president of the National Council of Traveling Salesmen's Associations. The statements I shall make are the consensus of opinion and the conclusions resulting from many conferences with representatives of all of the recognized traveling salesmen's associations and organizations throughout the country.

We believe that in the issuance of interchangeable scrip coupon tickets a just and reasonable reduction from the standard fares would be $33\frac{1}{3}$ per cent. At this rate the books would become instantly popular, and they would effect a substantial increase in the amount of travel by the employment of additional salesmen or the reemployment of those who have been laid off by reason of the high cost of traveling. The railroads thus would be immediately benefited, for in addition to the millions of dollars that would be on deposit without interest covering unused mileage and which would

logically grow greater and greater as these books become more popular, they would also enjoy the increased passenger traffic as well as the resultant freight created by the many additional traveling salesmen who would be put on the road by the business houses of the country in response to this reduction.

The traveling salesman is one of the most important factors, if not the most important factor, in the distribution of the great
239 bulk of products of the Nation's industries. Upon his activity depends very largely the economical functioning of our manufacturing and mercantile interests, and it must be remembered that they in turn, through the stimulation of new business, will be in a position to give employment to vast numbers of workers throughout the country; and it must not be forgotten that one of the outstanding reasons why the railroads have been suffering a decrease in passenger-miles is the fact that a large percentage of the people of our country have been unable to enjoy the opportunity of ordinary travel both because of unemployment and because of the unreasonable, high cost of travel.

We know that the reduction mentioned would be an inducement to traveling salesmen on commission to-day who are reluctant to pioneer or venture into new territory or towns in which they have no established trade, because of the existing excessive railroad fares. Likewise those firms employing and advancing the expenses of traveling salesmen are to-day reluctant to open up new territory with new men because the attendant expense under the present standard fares entails too great a degree of risk in proportion to the likely return.

Speaking for myself in my capacity as sales manager of one of the country's representative clothing manufacturers and as a member of the executive committee of New York's Men's & Boys' Apparel Industries, Inc., supplemented by my general knowledge of conditions existing with and among other manufacturing concerns of other lines of industry, as a result of my broad contact as president of the National Council of Traveling Salesmen's Associations, I am confident that the direction by your commission of a 33½ per cent reduction on the interchangeable scrip-coupon books ordered by Congress would immediately stimulate all industries and must add materially to both the passenger and freight traffic of the railroads of the country.

240 I have not prepared an analysis of the cost of producing this transportation to show whether the rate of 2.4 would meet that cost.

Where there is a fixed number of representatives traveling per year they would make additional mileage by the fact that they would make additional towns, and with respect to those organizations which have reduced their traveling force they would increase to cover those other points.

Increase in a salesman's travel does not necessarily imply reaching beyond a point, but in many instances merely means picking up smaller towns in between the larger cities.

I will illustrate how the mileage traveled may be increased even without enlarging the general territory covered. We have practically to-day eliminated all towns under 5,000, because it does not pay us with the present excessive cost of travel to have our men make those smaller towns. Formerly we made everything of 2,500 and upward; in some instances as low as 1,500. Now those merchants in the smaller towns are deprived of the facility of making personal selection from samples shown them by traveling salesmen, which is a decided advantage for the smaller dealer in the small town, who otherwise is compelled to order from catalog or by the open-
241 order method, whereby he may get what he wants and he may not.

I recall that some years ago in the Southwestern Passenger Association there was sold a book; I think they charged the purchaser one dollar for this book, and when he had traveled an aggregate of 1,000 miles, if my recollection serves me, he turned those certificates in, which showed the points of origin, the destination, and the price of the ticket, and he received a refund on that 1,000 miles, which was sold at 3 cents a mile at that time in the southwestern passenger territory, of \$10, if my memory serves me correctly.

Now, that was in effect until by legislation some of the States in the southwestern territory made the fixed rate 2 cents per mile—for instance, in Arkansas, Oklahoma, and Kansas—and then the railroads withdrew that privilege.

The railroads had put that means of a rebate into effect voluntarily. It seemed to work to mutual satisfaction to all concerned.

That is one thing that caused me to think that the 33½ per cent reduction would be feasible at this time.

I do not think the general business depression was the primary or even a large contributing cause of the decrease in the amount of travel by salesmen. If railroad fares had not been excessive, the business houses and manufacturing concerns would have been
242 inclined to have pushed harder. They would have taken a chance by putting additional men on the road and going after business that much harder, because that is the policy of every rightly conducted business organization—as business becomes more depressed, to work harder to stimulate business.

The National Council of Traveling Salesmen's Associations caused to be prepared a questionnaire which was sent to various institutions in different industries, which questionnaire asked for the following information:

"First, the character of the merchandise dealt in by the firm.

"Second, the number of salesmen employed who traveled each year from 1917 to 1921.

"Third, the number of business trips each salesman made.

"Fourth, the number of weeks each salesman traveled.

"Fifth, the number of trunks each salesman carried.

"Sixth, if the answers to the foregoing questions indicated that road traveling of the firm's representatives had been diminished in 1920 and in 1921, to state the reasons for this reduction.

"Seventh, whether, if the mileage book were issued at a reduction of from 25 to 33½ per cent, what effect it would have in 1922 and thereafter upon the selling staff of the firm and the extent of its traveling."

The National Council of Traveling Salesmen's Associations
243 received a number of replies, which I directed to be prepared in summary form for submission to this commission so that such summary would give the answers to the foregoing questions. The résumé thus prepared shows the following:

Schwarts & Jafes, Inc., 880 Broadway, New York, manufacturer of boys' & young men's clothing: Traveled 45 salesmen in 1917; 32 salesmen in 1921. In 1917 they traveled seven weeks each trip. In 1921 five weeks each trip. Formerly carried four trunks; 1920, three trunks. Excessive railroad, Pullman, and excess-baggage rates rendered trips of many men unprofitable. Others were forced to concentrate on larger cities and towns, thus shortening their trips. Mr. A. M. Loeb, sales manager, states that the issuance of mileage books at reduced rates would result in an increase in the number of men traveling and longer trips.

Hirsch, Wickwire Co., Chicago, manufacturers of clothing, 337 South Franklin Street, Chicago: Traveled 18 men. Mr. Scheltes, secretary and treasurer, states that salesmen would make a greater number of towns under more favorable mileage rates.

Bernhard, Ulman Co., Inc., yarns and art needlework, 107 Grand Street, New York City: Mr. Uhrey, president, states that they traveled 24 men, and that under a more favorable rate, and especially in connection with an interchangeable mileage book, they would reduce their traveling expense and increase their road forces because the rates now are too excessive.

J. B. Pearce Co., wall paper and wall decoration, 1069 Superior Avenue NW., Cleveland, Ohio: Have reduced their sales force. Prior to 1921, 25 men to 21 men, and have been sending their road representatives out on one trip a year as against two trips previously.

Mr. W. H. Gustin, vice president, states that "because of
244 increased passenger rates we have decided to cut down the size of our line and reduce the number of salesmen." He adds that if Congress should authorize the issuance of a mileage book at 33½ per cent it would "greatly increase our sales force and add to the number of weeks our men will travel."

Tobacco Products Corporation, 1790 Broadway, New York: Mr. Louis Erdt, vice president, states that they travel 200 salesmen pretty much the year round, but that the present high cost of travel has reduced the extent of the trips because of the high cost. Under a moderated cost "we would undoubtedly increase and extend our sales force on the road."

Cohen & Lang, 707 Broadway, New York, manufacturers of young men's and boys' clothing: Mr. O. P. Kilbourn, sales manager, states that they traveled about 20 salesmen and indicates that the very large increase in the cost of travel has had a marked tendency to restrict the length of their semiannual trips, which means, of course, that the amount of mileage which they cover is materially reduced. There is absolutely no doubt in our minds that should a material reduction in the cost of travel be brought about through a special mileage book our sales force for 1922 would be able to cover more ground, more economically, and therefore increase our sales to a large extent.

Crown Corset Co., 295 Fifth Avenue, New York City, announce through Mr. Ralph E. Miller, vice president, that their sales force has been materially reduced and their number of weeks diminished annually to 24 weeks because of the excessive high cost of road travel, adding that they would travel all salesmen continually and make the smaller towns.

Portis Bros. Hat Company, 337 South Franklin Street, Chicago, Ill., manufacturers of hats and caps, advise through Mr. I. M. Portis, president, that under more favorable rates they would increase the extent of their travelers and also their business.

Morganite Brush Co. (Inc.), 519 West 38th Street, New York City: Mr. H. C. Mills, sales manager, states: "We have had to restrict the distances covered by our engineer representatives (salesmen) during 1921 on account of business depression and cost of traveling. If a reduction by mileage book could be effected we should probably still expend the same amount on traveling but cover greater distances. We should probably extend the field of each man and make his trips cover a wider area or alternatively increase our force."

J. H. & C. K. Eagle (Inc.), 265 Fourth Avenue, New York city, silk manufacturers: Mr. W. S. Fraser, sales manager, states: "We are very keenly interested in the securing of a general mileage book which would materially reduce the amount of money we are compelled to expend in traveling our force of approximately 20 salesmen. Naturally in times like the present, when all institutions are endeavoring to hold their overhead down, the lowering of railroad charges would have a tendency to have our salesmen cover their territories more extensively and more frequently than they are now doing. Another fact to be considered is that we would also feel more inclined to increase our selling staff of traveling salesmen if the selling cost could be reduced from the high point that it has now reached. Railroad fares and hotel charges have both been excessive, and anything that will tend in the direction of reducing them will undoubtedly have the effect as indicated above. We trust you may be successful in securing this much-needed mileage book."

B. Kuppenheimer & Co., 415 South Franklin Street, Chicago, Ill., manufacturers of men's clothing, traveled 35 salesmen. Mr. B. J. Cahn, sales manager, states that they diminished their travel in 1921

due to the heavy cost of traveling in small towns. "If Congress would issue a mileage book it would be of material assistance in enabling us to reenter country districts."

246 Straube Piano Co., Hammond, Ind., manufacturers of pianos: Mr. R. S. Dunn, central and northwestern representative, advises that their salesmen operate on commission without drawing account. With the present railroad rates the men will not attempt prospects where an order is not assured. "This leaves dealers all over the territory who could possibly be sold without a personal contact with our road men. When urged to make these calls the salesmen simply tell us that they can not afford to spend the money without assurance of an order. Regular established trade is visited, but the missionary work, without which no factory can exist, is not done. Under lower rates these men would feel justified in extending operations into new territory and would double the present amount of traveling, which has reduced itself to about 15 weeks a year."

Aurora Corset Co., Aurora, Ill., manufacturers of corsets, travel 20 salesmen 44 weeks each year. Advise through their representative, Mr. S. J. Mead, that they would increase their road force under more favorable traveling rates.

International Corset Co., North Avenue and Union Street, Aurora, Ill., corset manufacturers, advise through their sales manager that they traveled 20 salesmen, adding that the traveling by their representatives throughout 1921 was at a minimum because of the high rate of transportation. He states that lower rates would "aid us materially in keeping the salesmen busily engaged for a period of 40 weeks out of the year for road work."

Janeway & Carpender, New Brunswick, N. J., wall-paper manufacturers: Mr. L. B. Janeway, vice president, states that they have reduced their sales force from 42 to 38 men and would probably travel more under a diminished mileage rate.

Graupner, Love & Lamprecht, 230 Fifth Avenue, New York City:

Mr. John H. Love states that if a general reduction in the
247 form of mileage books were made "it would act as an incentive to increase the activities of our salesmen to a considerable extent."

The Kippendorf, Dittman Co., Cincinnati, Ohio, manufacturers of ladies' shoes, traveled 24 salesmen, states Mr. Wm. B. Schawe, treasurer. Thirty-three and one-third per cent reduction would be the cause of making increased trips, whereas now the salesmen are reluctant to make return trips particularly embodying some distance. It will be an inducement for a great many houses to increase their traveling force and to cover territories more minutely than they have been desirous of doing in the past years because of the excessive transportation charges. "In our opinion, what the railroads may lose by making this concession of 33 $\frac{1}{3}$ per cent rate on a mileage book for the traveling salesmen will more than be made up in the increased mileage of travel and in the increased number of salesmen that will be added to the traveling force."

Sunstar Manufacturing Co., Inc., 740 Broadway, manufacturers of pants: Mr. Harry Ruder, president, states that they travel 16 salesmen and they would put on more salesmen and their entire sales force would be on the road a greater length of time if the cost of passenger travel was reduced.

Knight-Campbell Music Co., Denver, Colo.: Mr. W. W. Bradford, treasurer, announces that their traveling force has been reduced from 15 men to 9 men. Excessive railway fares, hotel charges, and other expenses limit the possible volume of business, because of the reduction in traveling force and the extent of territory covered. Under a 33 $\frac{1}{3}$ per cent reduction in connection with an interchangeable mileage book, "we would immediately be able to put on several more men and would extend the radius of territory covered by us very materially."

Thos. G. Plant Co., Boston, Mass., manufacturers of women's footwear: Mr. Frank R. Maxwell, vice president, states that they travel 36 men, who would remain on the road longer under a reduced rate, and at the same time the latter would help to reduce the cost of shoes.

Morse & Rogers, Duane, Hudson & Reade Streets, New York City, manufacturers of shoes: Mr. Morse G. Dial advises that they travel 60 salesmen, and a reduction in mileage rates would increase their traveling at least 5 per cent.

Muser Bros., 1150 Broadway, New York City, laces and embroideries: Mr. Morris Muser, vice president, states that they have reduced their sales force from 28 men to 18, the increased traveling expense being responsible; adding that they would materially increase their road salesmen, as many territories are not paying to-day on account of the heavy expense.

Fownes Brothers & Co., 119 West 40th St., New York City, gloves: Mr. W. P. Fillin, sales manager, states that they travel 23 representatives, and under a reduced mileage rate they would travel more.

The Autopiano Co., 653 West 51st Street, New York City: Mr. Paul B. Klugh, president, advises that they have reduced their selling force of 13 road men to 8 men because of the high cost. The issuance of an interchangeable mileage book would increase travel.

E. C. Atkins & Co., 56 Reade Street, New York City, tool and saw manufacturers: Mr. E. M. Clark, manager, advises that they have disposed of 40 per cent of their traveling force on the road because of the high cost of travel. If the interchangeable mileage book were issued at a reasonable reduction, it would increase their traveling materially.

Geo. C. Batcheller & Co., 130 Fifth Avenue, New York City, manufacturers of corsets, through their sales manager, Mr. L. A. Setzler, advises that they travel 20 road representatives, adding "As our merchandise is sold by traveling salesmen direct to the retail merchants, a reduction in railroad fares would

enable us to visit hundreds of small towns which are not now being visited, owing to high rates."

Heystek & Canfield Co., Grand Rapids, Mich., wall paper and paints, advise their sales force dropped from 17 representatives to 12, and that under more favorable rates they would increase their sales staff on the road.

Bolway & Co., Syracuse, N. Y., phonographs: Mr. Frank E. Bolway, president, states that they traveled 20 representatives continuously during the year round for many years, but that during the past two years they have diminished their traveling to one-half the year, the cause for diminishing travel being high cost, adding that "present rates are destructive."

Rosenwald & Weil, 3815 Armitage Avenue, clothing specialties, travel 30 salesmen. Mr. Max J. Help, sales manager, states that if an interchangeable mileage book at a reduction of rates would be issued their salesmen would travel longer during the year 1922.

Ederheimer Stein Co., 1911 Roosevelt Road, high-grade young men's and children's clothing, travel 26 men. Mr. Isaac Fishell, vice president of this company, states that if a mileage book were issued that the salesmen would make longer trips.

M. H. Birge Sons Co., Buffalo, N. Y., wall-paper manufacturers, through Mr. Howerd M. Eaton, vice president, advise that their sales force has been greatly diminished and that they have reduced the number of weeks of travel from 37 weeks per annum to 17 weeks, excessive rates being responsible. Under more favorable rates they would feel inclined to make a more thorough canvass for business.

Curtis Lager Fixture Co., 235 Jackson Boulevard, Chicago, Ill., through Mr. D. J. Burke, sales manager, advise that their traveling would greatly increase under a moderated overhead.

The Brody & Funt Co., Inc., 134 West 37th Street, New York City, manufacturers of ladies' coats, advise through

Mr. Henry Brody, treasurer, that they travel 18 road representatives, and whereas formerly these men traveled from 33 to 38 weeks a year they have not exceeded 15 weeks in 1920. "The high railroad fare and excessive charge for excess baggage compelled us to curtail trips of all men. If rates would be reduced, our men would travel during 1922 at least 30 weeks per year each."

Niagara Wall Paper Co., Niagara Falls, N. Y., wall-paper manufacturers: Mr. C. J. Rush, sales manager, states that under reduced overhead the result would be more travel, more freight, more business.

251 Hirachberg & Co., 339 Fifth Avenue, New York City, manufacturers of headwear, advise through Mr. Sidney G. Hirachberg, president, that lower rates would bring about decided economy and inducement to extend their territory.

The Whitaker Paper Co., Baltimore, Md.: Mr. J. Evan Reese, managing director, reports they traveled 23 salesmen. The expense of traveling is so heavy that it curtails their efforts and also forces their men to travel less than they would otherwise do. If the pro-

posed legislation passes it will doubtless stimulate the action of traveling men, and it would have a wholesome effect on business generally. There is no question in the world but that the amount of traveling done by salesmen since the present high cost of transportation has been in force has been materially reduced. If this cost is reduced, the territory will be flooded with traveling men, and where the traveling man goes there is business. They create business.

Richard E. Thibaut, Inc., No. 153 Madison Avenue, New York City, wall paper, advise that they now use motor cars as transportation for their travelers.

Geo. W. Helme Co., 111 Fifth Avenue, New York City, tobacco, travel 50 salesmen continuously. Mr. J. C. Hartley, sales manager, states that nearly all of their salesmen are using automobiles at present.

Edison Portland Cement Co., 8 West 40th St.: W. D. Cloos, vice president and general manager, announces that they travel 27 representatives, and further states "practically all of our sales force now cover their territories in automobiles. If the railroad rates should be reduced $33\frac{1}{3}$ per cent, it is possible that our salesmen could cover their territories with the same efficiency at greatly reduced cost per unit."

Williams Piano Co., Sioux Falls, S. D.: Mr. A. E. Godfrey
252 announces that their sales force was diminished from 10 salesmen in 1917 to 4 salesmen in 1921 and the number of weeks they traveled was greatly diminished, adding that under decreased traveling rates they could increase their railroad travel 100 per cent.

Gottschalk Steinberg & Co., Inc., 87 Fifth Avenue, New York City, veilings, etc.: Travel about 15 men, making six business trips during the year. They advise that the expense of traveling has been entirely too high. " $33\frac{1}{3}$ per cent reduction would be a great boost to business, not only in giving us a chance to have a larger sales force, but no doubt help reduce the cost of merchandise."

W. L. Douglas Shoe Co., 127 Duane Street, New York City.: Mr. Frank L. Erskine, director, advises that they travel 32 salesmen and that a decreased rate in traveling would enable these men to go into smaller towns, resulting in increased business.

Brown, Durrell Co., 11 West 19th Street, New York City, hosiery and underwear: Mr. D. F. George, of their sales department, advises that they travel from 60 to 65 salesmen and the lowering of passenger rates would enable 75 per cent of their men to call more often on their customers and sell more merchandise.

R. C. Williams & Co., 56 Hudson Street, New York City: Mr. W. L. Juhring states that they travel 100 salesmen almost the entire year; that a $33\frac{1}{3}$ per cent reduction would give them an opportunity of covering many more small towns, which they avoid on account of excessive cost to reach such points.

Jos. Musliner & Co., Inc., 101 Gold St., New York City, wholesale leather: Mr. Silas Musliner, president, states that in the event of the

reduction of rates they would possibly increase their traveling 20 per cent.

253 H. R. Mallinson & Co., Inc., 299 Fifth Avenue, New York City, broad silks: Mr. John Clingen states that they travel 20 representatives and they would consider seriously certain territories which they have not covered if rates were reduced.

The McCall Company, 236 West 37th Street, New York City, dress patterns and publications: Mr. Fred'k B. Davies, sales manager, states that they travel on an average of 25 road representatives. "That the proposed mileage book at 33½ per cent would reduce our cost of selling and make possible the augmenting of our staff and the working of smaller towns."

Hindes & Cross, 15 East 26th Street, New York City, manufacturers of women's coats: Mr. H. Hotchkiss states that under a 33½ per cent reduction they would travel at least 33½ per cent more.

W. J. Sloane, Fifth Avenue and 47th Street, New York City: Nelson S. Clark, director, states: "We are thoroughly in sympathy with the movement of your association. We believe that the railroad fares now in existence and excess baggage are a detriment to the country as a whole, as it certainly lessens the availability of a traveling force, and has with us, and we are in hearty accord with your efforts to obtain mileage books, and we would also say baggage books for excess, as we think we enjoyed some years ago. This would enable us to have our representatives more freely on their territories, and would, in our judgment, stimulate the activity of the traveling forces of the country as a whole."

Fred'k Vieter & Schelis, 65 Leonard Street, New York City, cotton goods and yarns: Mr. T. Holt Haywood states that the present rates have been a great hardship for all firms traveling a number of men. We are traveling in this department from 13 to 15 men who cover the country from coast to coast and visit every city of
254 consequence in every State, and on account of the rates which have recently prevailed, our men of course have not traveled as extensively as they might otherwise have done. There is no doubt that if the mileage books could be issued, it would be a very material incentive to travel our salesmen very much more than we have done in the past.

American Sponge & Chamois Co., 47 Ann St., New York City: Mr. A. J. Sloss, president, states: "We are heartily in sympathy with your efforts to have mileage books issued by the railroads for traveling salesmen. Our own business has been seriously affected by the high passenger rate charged at present to salesmen and we have been compelled to increase salesmen's commission to cover their increased traveling expenses. This increase we have naturally been compelled to pass along through the prices of our merchandise and we feel very strongly that inasmuch as the salesmen travel not for pleasure, but for business, that he is entitled to a lower rate than the ordinary occasional traveler. We sincerely hope the interchangeable mileage book will again be put into use with success."

A. M. McPhail Piano Co., 120 Boylston Street, Boston, Mass.: Roger S. Brown, vice president, states: "I am thoroughly in accord with you about this mileage question. We certainly would spend more time on the road and have more men out if we could get a mileage that we could use on all the roads at a reduction of such as 33½ per cent, but at present our output is curtailed on account of the enormous expense of selling, which of course includes railroad and Pullman rates. I shall be pleased to do anything I can to assist this good work and you may call on me at any time."

C. H. Crowley, 339 Broadway, New York City: They are now traveling 15 representatives, selling machine needles, cutlery, and that they would double the number of men if railroad fares were reduced to a reasonable rate such as is proposed in connection with the interchangeable mileage book.

S. S. Stafford, Inc., 603 Washington St., New York City, manufacturers of ink: H. A. Barrett, sales manager, states: "We are deeply in sympathy with your move. We employ approximately 25 to 30 salesmen a year, who make from 2 to 4 trips over each territory. We have been reluctant to place additional men on the road on account of the excessive traveling expenses since 1917. Our average transportation fares at the present time, not taking into consideration special trips which are frequently necessary, are about \$12,000 per year. Notwithstanding this fact, if the interchangeable mileage book is issued at a 33½ per cent reduction, we would add to our selling forces."

E. T. Eberhardt & Co., 874 Broadway, New York City, advises that traveling by their staff of salesmen was reduced fully 20 per cent during 1920-1921 on account of the high expense rates. Furthermore, they were compelled to reduce their lines from a trunk line to a suit-case line, as the expense of carrying a trunk was so high as to make it undesirable. In addition they state: "We believe that a reasonable reduction in general traveling expenses, and particularly in railroad fares, would increase the amount of our traveling immediately to the mileage covered in 1917-1918, amounting to an addition of 20 to 25 per cent over the present rate."

Butler Brothers, 495 Broadway, New York City: Mr. G. M. Marshall, sales manager, states that they would send out traveling salesmen on the road. "We do have a force of approximately 30 men who call on our customers in the eastern half of the United States. These men naturally do considerable traveling, and if Congress should order a mileage book to be issued at rates lower than those prevailing, we would undoubtedly travel more men on this work."

Atterbury Brothers, Inc., 145 Nassau Street, New York City: Mr. H. E. Atterbury, president of this company, states that the expense account of our firm relative to mileage for their salesmen has decreased and in place thereof they have been increasing the use of telephone and telegraph. "We estimate a 33½ per cent reduction in rail-

road fare would result in a 25 per cent increase in the amount of traveling which would be done by our salesmen."

Fred Butterfield, Inc., 361 Broadway, Mr. A. H. Zeller, vice president, writes: "We are naturally very much interested in your efforts to obtain mileage for road travelers, as it would mean considerable saving to us, and would automatically help affect the selling price of our merchandise."

Best & Co., 372 Fifth Avenue, New York City: Mr. Philip Boutilier, general manager, states: "We have on the road 8 months out of 12 two selling representatives, each of whom takes two assistants and seven trunks. In addition, we have one other representative on the road three months each year, who takes three trunks. The extremely heavy passenger and excess-baggage charges have practically eliminated what profit there has been in this road business, and if some relief is not had it may be advisable for us to withdraw our road people. The service which we offer to our customers by this road business is very much appreciated by them, and the business runs into very substantial figures, but the returns to us are not commensurate with the effort and service given. We hope that you will press this campaign successfully."

Bell Bag Company, 63 Front Street, New York City: Mr. Samuel T. Bell, president, announces: "Ever since increase of railroad
257 passenger rates we have been obliged to curtail railroad travel, as this expense had to be placed on the cost of goods and find buyers unwilling to pay for it. We are using the telephone (long distance) more frequently, but it is not as satisfactory as personal contact. We certainly would travel oftener if rates were lower."

Wm. Anderson Textile Mfg. Co., 48 White Street, New York City: Mr. J. R. Strohecker, assistant secretary and treasurer, states: "We assure you that we are in accord with your efforts to have passenger rates reduced by the issuance of mileage books. Traveling costs have increased so materially as to become a factor in determining the cost of our merchandise. It has been our observation during the past few years that because of the increased railroad rates they have not traveled as extensively as heretofore, with the result that we have lost an amount of business that ordinarily we would receive. A reduction in railroad rates would enable them to travel more extensively, obtain a larger volume of business, which necessarily would result in a larger income to the railroads because of increased shipments. We are of the opinion that if traveling expenses are reduced it will have a subsequent effect on the cost of merchandise to the ultimate consumer."

Grinnell Brothers, Detroit, Mich.: Mr. S. E. Clark, secretary, states: "It is getting to a point where the expenses are so heavy that few men can make good, and unless some change is made so traveling expenses can be reduced we shall be obliged to abandon that method of trying to do business. We believe railroad fares are too high and the railroad companies will get much less of our money for railroad fares on the present basis than they would get if railroad fares could

be reduced considerably. We have covered the entire territory of Michigan for a great many years, but the heavy traveling expenses is making it a severe problem as to whether or not we can continue. We could probably supply our salesmen with automobiles and we shall have to do that or something like that unless we get some relief in railroad fares."

Eisenstaedt Bros. Co., 320 South Franklin St., Chicago, Ill., manufacturers of men's neckwear: Mr. Harry Eisenstaedt, secretary, states: "In 1917 each of our salesmen made four trips. For the past three years they made three trips per year. During 1919, 1920, and 1921 our men were obliged to cut down one trip per year, owing to the great expense they were under, as our men travel on strictly commission basis and pay their own expenses. During the past two years we were obliged to change men more often than ever before. We believe that if an interchangeable mileage book at 33½ per cent reduction was issued our men would be more willing to stay out and work their territory closely and we would get back to the four-trip basis, but at present, with the high rates of railroads, hotels, and baggage transfer, we can not insist that our men should spend their money without getting reasonable results."

Cushman & Denison Mfg. Co., 120 Eleventh Avenue, New York City: Mr. D. C. Cahalane, secretary, states that the proposed mileage legislation is very conservative, and the concession asked for most reasonable; that every concern using traveling men have found restrictions in regard to mileage, coupled with the high rates, almost prohibitive. During the last two years we have been obliged to curtail along this line—instead of traveling more men we have traveled less men and have conducted a certain part of our business by mail which was formerly handled through travelers. Unless relief is granted there will be a further restriction in traveling and the railroads themselves will eventually be the losers. Lower rates would stimulate traveling and would be of mutual benefit to everybody concerned.

Mitchell Brothers, Inc., 594 Broadway, New York City, manufacturers of ladies' undergarments, assert that they are heartily in accord with the movement on foot regarding the issuance of mileage books, indicating that it would mean a great deal to them in the way of larger sales because their representatives frequently do not make intermediate stops because of expensive railway costs and do not cover their territory in full as expected of them.

International Tailoring Co., 4th Avenue and 12th St., New York City: Mr. R. H. Reiss, treasurer of this company, writes: "Our traveling men cover every State in the Union, making all towns of 500 and upwards, for the purpose of appointing new accounts for us and promoting the general interests of the firm to increase sales. The extent of our business requires that we increase our present sales force of 17 men, but we are not going to do so at the present time because of the high cost of travel. We feel that if

we should place more men on the road and if railroad traveling expenses were not exceptionally high that we would be able to increase our business. We appreciate any action on your part to influence Congress to pass an act providing for the issuance of an interchangeable mileage book at $33\frac{1}{3}$ per cent reduction."

The York Card & Paper Co., York, Pa.: Mr. John S. McCoy, general manager, states: "Our sales force consists of 12 men. Previous to the war it was our custom to send the men out on three trips per year, aggregating between 7 and 8 months of actual traveling. On account of the high cost involved we told our salesmen to let the customers know that we would only make one trip per year, and this procedure resulted in cutting the traveling expense to one-half of what it was formerly or less. If it were possible to secure mileage books at a reduction of $33\frac{1}{3}$ per cent, it would 260 undoubtedly result in our men going back to the old traveling schedule lasting from 7 to 8 months in each year."

National Ribbon Company, 440 Fourth Avenue, New York City: Mr. Adolph Miller, secretary and treasurer, states: "We have felt very keenly the constantly increasing expense both of the railroad as well as the Pullman accommodations, and would therefore greatly welcome any step which will result in a material reduction of our traveling expenses."

Kipp Phonograph Co., Indianapolis, Ind.: Mr. W. E. Kipp states: "We are very positive that we would undoubtedly increase our efforts so far as sending travelers out if we could see some relief from the high cost of it."

J. W. Jenkins Sons Music Co., Kansas City, Mo.: Mr. S. D. Beatty states: "We have been compelled to curtail our traveling, and now out of the 12 stores that we operate throughout this section of the country we are sending men on the road only for the more important business. We can not afford to send out the number of traveling men or make the number of trips that we could formerly afford to make, for the reason that the traveling expenses are so excessive cost, as compared with the cost of 1917 and earlier, that we can not take the chances that we formerly could take, and our sales for this reason have been curtailed, for we only go after out-of-town business when it is absolutely necessary, and when we are practically sure of getting it by sending a representative."

D. Strauss Co. (Inc.), 79 Fifth Avenue, veilings, reports: "A reduction in the mileage charged, especially for our traveling salesmen, would enable our men to take longer or more trips, thereby selling more goods and helping a quicker return to the prosperity of the country. A lower traveling rate would be of more benefit 261 to the average salesman, thereby increasing his purchasing power and creating a larger demand for merchandise, which will be beneficial to the country at large."

G. & H. Fuld, 1140 Broadway, New York City, state: "We are strongly in favor of the issuance of an interchangeable mileage book at a reduced rate, owing to the fact that a great many of our men

are on a commission basis and as they pay their own expenses it would help increase their incomes. Furthermore, reduced mileage rates would encourage more traveling men to go on the road, and thereby help the railroads considerably."

Haviland Shade Roller Co., 407 Broome St., New York City: Mr. Marston Haviland states: "We have been obliged to considerably curtail the amount of traveling done by representatives on account of the high railroad fares because the volume of sales secured did not increase in anything like the proper proportion to pay for these expenses. We feel that if railroad fares were reduced 33½ per cent in connection with an interchangeable mileage book, that we would readily be disposed in keeping our men on the road much more continuously than we are now doing, which would result in mutual benefit to the railroads themselves."

E. M. & F. Waldo, 11 Broadway, New York City: Mr. Frank Waldo states: "Owing to the great cost of traveling, we have been unable to do as much road work as conditions really demand. It would be possible for us to increase our traveling to an appreciable extent if an interchangeable mileage book would be issued at a reduction of 33½ per cent."

M. S. Mork & Company, 21 West 4th St., New York City, manufacturers of straw hats: Chas. A. Wood, treasurer, states: "In former years we thought nothing of sending our representatives out on the road as often as 6, 8, or 10 times in order to visit their trade, whereas to-day we take to the road as infrequently as is possible, and we believe this is true of most of the houses in our line. We trust that you will be able to stress upon Congress the importance of the issuance of a mileage book, as this will encourage us to make more frequent trips."

Holsten, Young & Co., 34 West 27th street, New York City, automobile and rain coats: "In the last few years our salesmen have not traveled as much as they should, owing to the great expense connected therewith. If the mileage and excess baggage rates could be reduced we think it would have a tendency for all concerns to employ traveling salesmen to keep their men on the road longer and have them make more frequent trips. We trust that your efforts will be successful in obtaining a reduction in both mileage and the excess baggage rates in addition thereto."

Voss & Stern, Fifth Avenue at 15th Street, New York City: "We wish to go on record as being decidedly in favor of the issuance of mileage books on all our railways. There is absolutely no doubt in our mind that general traveling has been curtailed through the extremely high rates prevailing, and we are decidedly of the opinion that the railways would receive a total sum which would be at least as much as they are now collecting, through the increased travel that would take place if the rates were reduced. A reduction of rates, to our way of thinking, will enable American industry to serve the country more effectively and go a great way towards establishing true prosperity."

Edmonds & Lefkovics, 1 East 33rd Street, New York City: Mr. C. G. Edmonds states: "I heartily endorse the effort you are making for the reduction in rates, as the cost of traveling is so excessive that I have often wondered how it is possible for anyone depending upon road business to pay the railroad rates which we are now being charged. In making our trips to Chicago, Kansas City, and beyond it is necessary to carry two wardrobe trunks, and considering the charges which we are called upon to pay reduces the profit so materially that it is a question whether these trips are well advised. An interchangeable mileage book at 33½ per cent reduction would certainly change the expense."

Utz & Dunn Co., Rochester, N. Y., women's shoes: Mr. M. E. Smith, sales manager, states: "We travel 24 salesmen and if we have the benefit of an interchangeable mileage book at a savings of 33½ per cent the immediate result would be an increase in the number of weeks which each salesman travels."

Henry Glass & Co., 46 White Street, New York City, linen importers: Mr. Leopold Davis, treasurer, states that they traveled from 15 to 20 representatives and the high cost of travel has reduced the number of trips, that with more favorable rates they would increase their road activities.

Habicht & Co., 161 Hudson Street, New York City, importers of fruit products, state that they travel 18 representatives, adding that if traveling were cheaper more salesmen would be employed and it would stimulate their traveling and increase it.

Continental Paper & Bag Mills, 16 East 40th St., New York City: According to Mr. J. C. K. Jordan, assistant secretary, they employ approximately 50 men, of whom 35 have been constantly on the road and the balance have not done so because of the very high rates, and adds that under a moderated cost as proposed in the issuance of an interchangeable mileage book, that they would reduce their expenses considerably and help to reduce their cost."

The Tait Paper & Colo Industries, Inc., Glens Falls, N. Y.: 264 Mr. T. S. Marshall, vice president and general manager, wall paper division, states that they traveled 24 salesmen in 1917 at an average of three trips a year, on an average of 30 weeks each, and carry four trunks over each territory. The effect of the high cost of travel has diminished their force to 16 and under a more favorable rate they would probably increase their sales force without delay.

Hydeman & Lassner, 105 Fifth Avenue, New York City, veils and veilings, etc.: Mr. H. Haelel states that they employ 20 salesmen who make from five to six trips a year, totaling about 40 weeks of travel. Their force has been diminished because of the high rates and that a reduction in rates would cause them to stay out longer and make more towns which they do not cover now because of the high tariff.

National Gum & Mica Co., 59th Street and 11th Avenue, New York City: According to Mr. A. E. Wilbur, sales manager, they travel

from 12 to 14 men, some of whom previously traveled the year round, but on account of the great expense for road traveling they have decreased their activities, but adds that a reduction of rates in connection with an interchangeable mileage book as proposed would cause them to increase their road activities.

Henry C. Kelley Co., 12 Walker Street, New York City, twines, yarns, cordage: A. W. Archer, vice president, states that they have reduced their traveling force from 8 men to 4 because of the road expenses.

Russell Playing Card Co., 200 Fifth Avenue, New York City: Their sales manager states that they would probably increase the extent of their traveling under a moderation of cost in travel.

The Esterbrook Steel Pen Mfg. Co., Camden, N. J.: Mr. H. C. Sharp, sales manager, states that they would consider
265 seriously adding to their selling force for 1922 if a mileage book at 33 $\frac{1}{3}$ per cent reduction were issued.

S. Augstein & Co., Elmhurst, N. Y., manufacturers of sweaters and knit goods: Mr. D. Millhauser states that they traveled from 12 to 18 men in 1920 and 1921. Individual trips were shortened owing to the high cost of travel.

Titus Blatter & Co., 162 Fifth Avenue, New York City: Mr. G. S. Hoffman, director and sales manager, states that they have reduced their sales force due to the high cost of travel and that under more favorable rates there was a possibility of their salesmen extending their business trips.

F. O. Pierce Co., 12 West Broadway, New York City, paints and varnishes, state that in 1917 they traveled 14 men and in 1921 they traveled but 12 men. Mr. Henry A. Fitch, sales manager, states that they have dropped several of their men and would increase their selling force should an interchangeable mileage book be issued.

Fred'k Hacker & Co., 31 West 21st Street, New York City, employ 25 salesmen. Mr. David Little, sales manager, states that they would enter territory where at present the cost of travel is excessive and prohibitive if an interchangeable mileage book were issued.

Greenebaum Bros. & Co., 22d and Arch Streets, Philadelphia, Pa., travel 22 representatives. Mr. R. Hamill D. Swing, jr., states with a 33 $\frac{1}{3}$ per cent reduction in railroad fares they would be able to concentrate their territories, make smaller points, which means we would use a larger sales force, sell more, and get a great distribution of their merchandise.

S. & A. Stern, 87 Fifth Avenue, New York City, laces and embroidery, state that they have traveled much less than usual
266 because of excessive cost of transportation. The cost of merchandise to-day is half what it was when these excessive rates were put on, and therefore the traveling expense is beyond proper proportion. If the cost of transportation were cheaper, it would mean that more business would be created, for then we could afford to send men on the road profitably.

Campbell, Metzger & Jacobson, 93 Broadway, New York City, manufacturers of fancy goods: Mr. David Metzger states that a reduction in rates would stimulate their business.

267 I. Ginsberg & Bros., 102 Madison Avenue, New York City, manufacturers of wash dresses and uniforms, state that their 12 representatives would travel more frequently under more favorable rates.

Perlman Cycle & Auto Supply Co., 34 Warren Street, New York City, advise that they would put on extra selling force under more favorable traveling overhead.

National Sponge & Chamois Co., Inc., 158 William Street, New York City: Mr. J. H. Mathios, secretary, states that their men have traveled less in the last several years on account of the high cost of travel. Under more favorable railroad rates they would increase their amount of traveling.

Finsilver, Still & Moss, 225 Fifth Avenue, New York City, woolens & silks, state that they would increase their staff the moment traveling rates were more encouraging.

A. L. Clark & Company, Inc., 311 Sixth Avenue, New York City, staple notions and small wares, state: "The general selling cost, of which railroad fares and baggage were the greatest part, increased to such proportions that in July, 1921, we were compelled to withdraw our men from the road entirely, and for the last six months of 1921 they did not travel at all. Furthermore, for the present year we are preparing lines by photographs, etc., so they will only carry a special handcase, no trunks whatsoever, in order to average by saving on baggage and transfer and equalize on actual expense. Should an interchangeable mileage book be issued at 33½ per cent reduction, we should not only increase but also return to sample trunks and arrange to increase the weekly travelers' period as well."

Edwin Sommerich, 40 West 32nd Street, New York City, millinery: Mr. Edwin Sommerich states that they reduced their sales force from four to three representatives and the number of weeks traveled from 22 to 17, showing a decrease in travel of 37 weeks, excessive railroad rates and hotel charges being the cause of the reduction of road men. 1917, 4 men traveled 22 weeks each, total 88 weeks; 1921, 3 men traveled 17 weeks each, total 51 weeks; net loss 37 weeks.

A. M. McPhail Piano Co., 120 Boylston St., Boston, Mass., manufacturers of pianos: One representative formerly traveled about ten months and the other half the time. On account of the present railroad rates all road sales efforts have been abandoned; net result, loss of 60 weeks.

Stone Piano Co., Fargo, N. D., pianos and musical merchandise: Mr. A. G. Stanton, secretary and treasurer, advises they traveled 6 men 50 weeks each per year. In 1921 they retained only 3 salesmen, with the exception of about 3 months a year, when 4 were on the road. We find it cheaper to supply cars, and with the exception of

one man each has been using automobiles almost exclusively during 1921.

E. Ries & Co., Inc., 110 Fifth Avenue, New York City, lace curtains: Mr. Carl Ries, president, states that they have maintained a sales force of 10 men, who prior to 1919 traveled 30 weeks a year, since that time but 22 weeks a year, showing a net loss of 20 weeks in travel. 1917, 10 men traveled 30 weeks each, total 300 weeks; 1921, 10 men traveled 22 weeks each, total 220 weeks; net loss 80 weeks.

Klauber Bros. & Co., 877 Broadway, New York City, laces and embroideries: Employed about 30 salesmen, who formerly made 3 trips a year, totaling 8 to 9 months on the road. Since 1920 many of their representatives only made 2 trips a year, total of 6 or 7 months.

Klinger & Co., 737 Broadway, New York City, manufacturers of boys' waists and pants: Mr. Adolph Klinger states that they reduced their sales force from 8 representatives to 5 representatives and the period of time on the road from 26 to 20 weeks, showing net loss of 108 weeks of travel, for the reason that traveling was too expensive, and they had to reduce their force. If an interchangeable mileage book were issued at 33½ per cent reduction, they would increase their selling staff. 1917, 28 men traveled 26 weeks each, total 208 weeks; 1921, 5 men traveled 20 weeks each, total 100 weeks; net loss 108 weeks.

Fleischaker & Baum, 45 Greene Street, New York City, manufacturers of dolls: Mr. J. L. Hackel states that their sales force has been reduced from 6 men to 3 men and the number of weeks of traveling from 18 to 14 and the number of trunks traveled from 3 to 1. Net loss 56 weeks of traveling due to increase in traveling expenses. 1917, 6 men traveled 18 weeks each, total 84 weeks; 1921, 3 men traveled 14 weeks each, total 42 weeks; net loss 42 weeks.

Samuel Buyer & Co., 935 Broadway, New York City, notions: Mr. Albert Wolfe states that they have reduced their sales force from 6 men to 3 men; the number of trips from 5 to 3; the duration of each trip, formerly 6 to 7 weeks, to 5 weeks; net loss 155 weeks. They attribute the shrinkage in road selling efforts to the high cost of travel, and add that they would increase their sales staff as well as their territories under a moderated cost. 1917, 6 men traveled 35 weeks each, total 210 weeks; 1921, 3 men traveled 15 weeks each, total 45 weeks; net loss 165 weeks.

Ode & Gerberoux, 421 W. Broadway, New York City, confectionery: Mr. Ode states that they traveled 6 representatives who make 7 business trips each year of 6 weeks each, and adds that if an interchangeable mileage book at 33½ per cent reduction is issued that they would double the extent of their traveling. This in itself would mean 252 weeks of constant traveling, adding to the income for the railroads.

Charles Scribner's Sons, 507 Fifth Avenue, New York City, publishers: Mr. J. L. Thompson, manager of the wholesale department,

states that they would doubtless increase the amount of their sales force and could through a reduction of mileage afford to make many cities which are not now visited because of the cost.

Japan Paper Co., 109 East 31st Street, New York City, importer of papers: Mr. Geo. A. Nelson, sales manager, states that they traveled 10 representatives, and adds that they would very much be encouraged to increase their traveling under more favorable rates.

Star Shirt Mfg. Co., 267 Fifth Avenue, New York City, manufacturers shirts and pajamas: Mr. Harry Bausher, vice president, states that they traveled 8 salesmen and that they would undoubtedly increase their sales force and extend their territory at a reduction in the cost of travel.

Hodges Fiber Carpet Co., 212 Fifth Avenue, New York City, wool and fiber rugs: Mr. David H. Miller states that a reduction of fares would mean more traveling for salesmen and keep every-
271 one and customers alike posted and better informed of business conditions.

Josiah Wedgwood & Sons, Inc., 255 Fifth Avenue, New York City, china importers: Mr. Geo. H. Service states that because of the high cost of travel it has been necessary to reduce their trips from 20 weeks to 10 weeks and likewise to reduce the amount of samples carried from 4 trunks to 2 trunks, adding that under more favorable transportation rates they would travel more and carry more sample equipments that in itself would add to the sale of merchandise.

Goldsmith, Stern & Co., 33-43 Gold Street, New York City, jewelry: Mr. Thos. S. Mack states that they would immediately add to their present selling force if an interchangeable mileage book at 33½ per cent was available.

F. C. Davidge & Co., South Bend, Ind., wall-paper manufacturers: They state that they have reduced their sales staff by one-half and also the number of months that their representatives travel, inasmuch as the traveling expenses have forced them to seek distribution through the efforts of the jobbers' traveling salesmen instead of their own. Mr. F. C. Davidge adds that he would immediately augment their sales staff under more favorable traveling rates.

The Sam'l C. Tatum Co., 2062 Reading Road, Cincinnati, Ohio, manufacturers of loose-leaf system and devices: They state that because of the high cost of travel they have reduced the number of weeks which their representatives covered the territory from 30 to 42 weeks and add that they would do more traveling under more favorable rates.

Metal Hose & Tubing Co., Raymond & Tillary Streets, Brooklyn, N. Y., gasoline and oil hose: Mr. J. M. Oden, president, states
272 that their sales force has reduced from constant all-year-round traveling to 24 weeks, due to the high cost of traveling, and that they would immediately increase their traveling force under moderated rates.

Stevens & Co., 375 Broadway, New York City, manufacturers of bicycle and automobile accessories and tools: Mr. R. E. Pye, sales

manager, states that they have reduced their sales force from 7 representatives to 3 and the number of weeks on the road from 40 to 35; net loss, 175 weeks. "Greatly increased expense was a large factor in our determination as to whether or not we would maintain our full force. Would increase the sales force 25 per cent and the weeks traveled proportionately if an interchangeable mileage book were issued at $33\frac{1}{3}$ per cent reduction." 7 men traveled 40 weeks, total 280 weeks; 1921, 3 men traveled 35 weeks, total 105 weeks; net loss 175 weeks.

Davidson & Schwab, 58 West 40th Street, New York City, manufacturing jewelers: They state that the increased cost of traveling has reduced their road traveling and they would undoubtedly increase the same under more favorable road conditions.

Montana Phonograph Co., Helena, Mont.: Mr. H. G. Parchen, manager, states that one representative, beginning June 1, 1921, and ending December 31, 1921, used scrip books for \$471.20, including war tax. He would be out on the territory almost continuously if rates were lowered to a proper degree. At present writing he goes out only when absolutely necessary.

Boyden Shoe Mfg. Co., 185 Washington St., Newark, N. J., manufacturers men's high-grade shoes: Mr. Slavens, president, states that as conditions now stand all salesmen hesitate about making additional trips, but at a reduced rate of $33\frac{1}{3}$ per cent promised he will
 273 welcome the opportunity. Furthermore, it will induce many manufacturers to increase the number of their travelers and to cover territories much closer than they have in the past few years, due to heavy transportation charges. In our opinion, railroads will be more than compensated for any loss they may sustain in granting the traveling salesmen of America a concession of $33\frac{1}{3}$ per cent rate on a mileage book, by increased mileage of travel, increased number of salesmen that will be added to the traveling force, and by the increased amount of freight that will follow in the path of each salesman.

Union Bag & Paper Corp., 276 Drexel Bldg., Philadelphia, Pa.: Mr. H. C. Hancock, manager of the Philadelphia branch, states that 8 of their representatives covered 71,668 miles during the year 1921, adding that under reduced rates that towns would be visited more frequently, therefore greater mileage would be used in 1922 if the rates were sufficiently moderated.

The Monarch Company, 718 Broadway, New York City: Mr. B. Cohn states that a reduction of $33\frac{1}{3}$ per cent under existing rates would tend to help in more ways than can be described or imagined because the reduced rates would encourage travel to a far greater extent. At present there is altogether too much "lay-off" between trips. This is due to the fact that railroad fares are exorbitantly high and the average traveler cannot make both ends meet after continuous traveling.

D. Armstrong & Co., Inc., 155 Exchange St., Rochester, N. Y., women's shoes: Reduced their sales force from 6 to 4 men, traveling

20 weeks per year, showing a net loss of 40 weeks of travel. 1917, 6 men traveled 20 weeks each, total 120 weeks; 1921, 4 men traveled 20 weeks each, total 80 weeks; net loss 40 weeks.

274 Adler & Adler, 396 Fifth Avenue, New York City, manufacturers of waists: Mr. Leo P. Weintraub states that they traveled 5 salesmen, reducing the number of trips per year from 6 to 4, which automatically reduced their traveling from 35 weeks per year to about 22 weeks annually. Net loss, about 62 weeks a year.

King & Applebaum, 333 Seventh Avenue, New York City, ladies' dresses: Mr. John Allen King states that they employed, in 1918, 28 salesmen, each of whom carried 2 trunks and made 4 trips a year, totaling 30 weeks each of travel. Net loss to the railroads, 540 weeks. They attribute the high cost of traveling and general conditions as the cause of discontinuing all road salesmen.

R. H. Sircom & Co., Melrose, Mass., petticoats: They maintain a sales force of 9 men who formerly made 6 to 8 trips a year; now reduced to 3 or 4 trips. Formerly traveled 40 weeks a year; now, 25 to 35 weeks. Net loss, 90 weeks. The reason for diminished travel is the high cost, Mr. J. D. Bullene, assistant treasurer, states.

Deutz & Ortenberg, Inc., 2 West 33rd Street, New York City, manufacturers ladies' waists: Herbert J. Deutz, president, states that their four representatives formerly made 4 trips a year, total of 5 months of travel, whereas they now make but 2 trips, totaling one month. Net loss, 16 weeks. He adds that their representatives would naturally travel considerably more at a lower cost, so that their own incomes would be increased.

Henry H. Finder & Co., 498 Seventh Avenue, New York City, manufacturers of coats and suits: They state that their traveling has decreased because transportation rates are too high, adding that their salesmen would travel more often and at a longer period at a moderated cost.

275 Wm. Strauss, Inc., 18 West 22nd St., New York City, manufacturers of boudoir caps: Mr. Wm. Strauss, president, advises that increased efforts to market their goods and a longer period of travel would result if an interchangeable mileage book were issued at 33½ per cent reduction.

Metal Stamping Company, Long Island City, N. Y.: Mr. R. A. Picard, sales manager, states: "We want to highly endorse the work you are doing in connection with recommending an interchangeable mileage book at 33½ per cent reduction. We have already written our Senator, inasmuch as we are certain that the high traveling rate now is increasing sales expense all over the country and the consumer is paying for it. If there is anything we can do to assist you, do not hesitate to call on us."

E. H. Behrens & Co., Inc., 57 Worth Street, New York City, advise: "We are very much interested in the matter of reissuance of mileage books, as our expenses for traveling are very large and this reduction of rates will be of material help to us in these hard times."

Jaburg Brothers, Inc., 10 Leonard Street, New York City, state: "Our salesmen are on commission and pay their own expenses. We are deeply interested in a reduction of traveling expenses. Should the railroads issue an interchangeable mileage book, it would be of material benefit to the country at large."

Claffin, Thayer & Co., 58 Reade Street, New York City, manufacturers of boots and shoes: Mr. E. C. Thayer writes: "Most of our salesmen travel in the metropolitan district. Our out-of-town salesmen use automobiles chiefly. We are therefore not so directly interested in an universal mileage book, but we can thoroughly
276 appreciate the convenience it would be to salesmen covering extensive territories and using the railroad almost exclusively. Railroad fares and freights at present are still on a war basis, and while the railroads are making no money because railroad wages are still on a war basis, we believe there can be no general improvement in business until fares and freights are materially reduced."

Thomas A Edison, Inc., Orange, N. J.: Mr. T. J. Leonard, general sales manager of the musical phonograph division, advises: "This particular branch of the Edison interests does not employ traveling salesmen; our executives, however, do considerable traveling, and from that standpoint, but more particularly for the reason that our jobbers, through whom our phonographs and recreations are distributed, employ quite a number of travelers, we are very much interested in your propaganda for the issuance of mileage books. My suggestion is that you address a questionnaire to each of our jobbers for the particular attention of the executive whose name appears on the attached list of jobbers. I should say that the combined traveling staff of all jobbing points will approximate 100 men. I should like also to suggest that you address a questionnaire and literature on the subject to the following executive of other departments of the Edison interests." "Unquestionably the issuance of mileage books effecting a reduction in cost of travel would have a stimulating effect upon our business, and we are very much interested in your efforts, for which we wish early and definite success."

277 Cross-examination.

Railroad fares make from one-quarter to one-third of the expense paid by a traveling salesman. He will travel on the average from 50 to 100 miles a day. Someone has estimated that a salesman will travel 50 miles a day, but that is after he reaches his territory. To get to his territory he has to travel from 100 to 3,000 miles and the same distance returning from it.

The majority of the members of our associations are located in the East and Middle West.

I think 20 to 25 per cent of the total passenger travel would be on the scrip tickets if sold at a reduction of one-third.

In the vast majority of cases the salesman travels upon a commission basis, and all expenses, including railroad fares, are charged against the commission, so he bears them.

I have not figured out in dollars and cents how much the carriers' loss on the scrip books would be in making my estimate that the loss would be offset by the increased travel.

There were approximately 250 or 300 letters sent out in this questionnaire. We received possibly around 140 or 150 answers.

"Q. And you have included in that statement all of the answers?

"A. All that were intelligently replied to.

278 "Q. You mean you have omitted some that were sent you?

"A. Yes, sir. As an example of some of those that I have omitted, I will show you two that are typical. Here is one concern:

"How many salesmen did you employ who traveled each year from 1917 to 1921?"

"No answer to that question.

"How many business trips did each salesman make?"

"No answer.

"How many weeks did each salesman travel?"

"No answer.

"How many trunks did each salesman carry?"

"None."

"If the answers to the foregoing question indicate that the road traveling of your representatives had been diminished in 1920 and 1921, please state fully the reason."

"No answer.

"If Congress should order a mileage book to be issued at a reduction of from 25 to 33½ per cent under existing rates, what effect would it have in 1922 upon your sales staff and the extent of its travel?"

"Increase it."

"But he gives no reason for it. It is absolutely valueless to you or to us.

"Here is another one: He leaves every question blank; doesn't say anything at all. He just makes some dashes and says nothing; no summary or anything else. It is absolutely valueless.

"Answers of that type have been entirely omitted, because they served no purpose either for you or for us."

279 JAMES C. LINCOLN testified: I am traffic manager of the Merchants' Association of New York, an organization composed of over 6,000 members, embracing every line of commercial activity in New York City, including real estate, railroads, and banking and other interests. However, of that membership over 5,000 are engaged directly or indirectly in commerce and the promotion of business.

It is for the merchants and manufacturers that I am appearing at this time before the commission to give such light as I can upon the matters involved.

Under the provisions of General Order 28, issued by the Director General of Railroads effective June 10, 1918, all forms of mileage

books or reduced passenger fares were withdrawn and the minimum straight mileage fare was increased to 3 cents per mile. This minimum rate, under the authority of the commission in Ex Parte 74, was then increased to 3.6 cents per mile as the basic rate.

The withdrawal of the wholesale form of passenger transportation, mileage books—and when I say “mileage books” I will also include in that term scrip books, because they are two forms for accomplishing the same end—which the commercial traveler enjoyed, and which the employer of the traveling salesman previously enjoyed, placed upon these men increases in transportation costs out of proportion to the increases that were placed upon the general traveling public. For example, under General Order 28, where the \$20 per thousand mile book prevailed, the increased transportation charge paid by the commercial traveler was 50 per cent and where the \$25 per thousand ticket prevailed the increase was 20 per cent. Where the straight mileage basis prevailed, that was applicable to the general public, of 3 cents per mile, there was no increase made.

The increases in passenger fares, therefore, fell much harder upon the commercial traveler than any others making use of the passenger-train service of the carriers.

280 In these proceedings and in other previous activities in connection with the interchangeable mileage book, both before the Railroad Administration and with the railroads, we have been cooperating with the National Council of Commercial Travelers, which represented the traveling men and the men working on commission. It is for that reason I felt that I should appear in these proceedings to represent the merchant or jobber who employs traveling men and speak from his standpoint.

Some of our merchants with whom we have been corresponding and discussing the situation advise that by reason of the high cost of traveling they have been compelled to retrench in the number of salesmen employed; others have found it necessary to restrict the trips of the commercial traveler to the two intensive selling seasons—or more commonly termed buying seasons, looking at it from the consumers' standpoint—of spring and fall, depending upon the sale of goods between the seasons by correspondence and mail orders. In other words, the higher cost of traveling to the commercial traveler has restricted the number of trips, and has to some extent restricted the number of points at which he stops.

In many lines of business the expense attached to the selling and distribution of goods entering into interstate commerce represents a material part of the cost of the goods to the consumer and necessarily affects the cost of living.

Our merchants have expressed the view that if the direct expense of maintaining a corps of traveling salesmen can be reduced it will result in a more intensive use of the commercial traveler for the selling of their wares, by creating a spirit of rivalry and competition between these agents of the jobber and manufacturer by direct pres-

entation of the goods—showing to the consumer—which will mean
 a renewed business activity, a bringing into commerce busi-
 281 ness that would not otherwise move except by direct sollicita-
 tion and showing of goods.

The commercial traveler is a regular and consistent patron of the railroads, and by reason of his vocation—that is, creating commerce, exchange of commodities between the different sections of the country—he is really the agent of the carrier as well as that of the merchant, in creating an interchange of goods between the different sections of the country, from the transportation of which the carrier secures the larger part of its revenues, the freight transportation representing revenues to the carrier that are beyond those of the passenger transportation.

It is our view that the commission should give most earnest consideration to a partial restoration, at least, of the pre-war services and charges by the establishment of an interchangeable mileage book—and, as I say, in using the term “mileage book” I am using it as covering the scrip book.

I have been asked by the Chicago Association of Commerce, its trade commissioner, to also express their sentiments—they were unable to be present—in favor of the interchangeable mileage book. They state that without question the lower mileage rates will increase travel, as the present cost of keeping men on the road is almost prohibitive, and no unnecessary traveling is being done. They state also that the merchants located in that territory say that their selling staff would be increased if they could reduce this overhead cost of commercial travel.

I also have a statement to make for the National Wholesale Grocers' Association of the United States, which reads as follows:

“The members of this association are wholesalers, distributors, and jobbers of groceries; that is, foods and kindred products. These wholesale grocers employ a considerable number of salesmen who travel and sell their goods to retail customers.

282 “The margins upon which wholesale grocers do business are narrow in the extreme, and no inconsiderable part of the cost of doing business is the item of transportation used by their traveling salesmen. Every endeavor is made by the members of this industry to reduce the cost of doing business so that the retail grocer and the consumer may be served at a minimum expense. It will be remembered that the goods in which they deal are the basic necessities of life and every effort is put forth to provide the public of this country with its food at as low a cost as is possible.

“Groceries may be conveniently divided into two classes, viz, staples, such as sugar, flour, salt, coffee, and the like, and foods which are not so common and essential, such as canned fruits, preserves, and a host of other items approaching almost the classification of luxuries. The former type of product is a basic necessary and not difficult to sell, while the latter, on the other hand, is susceptible to good salesmanship, and the business is intensely com-

petitive and must be vigorously sought. The sale of this type of goods can be developed by good salesmanship and salesmanship involves frequent visits to customers. Extraordinarily high passenger fares certainly are not conducive to any extensive sales campaign.

"The alleviation of these burdensome transportation charges would enable salesmen to make more frequent calls and trips and to include wider territory for the gathering of new business. The resulting new business for such increased selling activity would naturally be reflected in greater shipment of freight from the manufacturer and producer and reshipment by the jobbers and wholesalers, thereby benefiting the carriers themselves by producing increased revenues from this freight traffic.

283 "We recommend that a reduction of about one-third from the present passenger rates be made.

"In conclusion, we are firmly of the opinion that the resumption of mileage books by the carriers at a substantial reduction from the present rates will benefit not only the mercantile interests of the company but will result in substantial improvement and benefit to the carriers themselves. It is our genuine belief that such benefits will inure to ourselves and the carriers by increase in business and freight revenues."

The reduction in travel, to my mind, is due to two causes—the general business depression and passenger fares—not exclusively to one or the other.

J. S. TEDROW, appearing for the Chamber of Commerce of Kansas City, Mo., stated:

"I simply desire, on behalf of our organization and the members thereof who are engaged in general mercantile lines, wholesale, and so forth, and who employ a large number of traveling men, to concur in the testimony that has been offered on behalf of the traveling men's organizations and to state that our position is the same as theirs."

284 C. A. Fox, recalled by respondents, testified further:

With reference to commutation tickets, I think they increase traffic by inducing people to move from city to the suburbs.

There is a possibility of revenue losses to the Class I roads to the extent of the inability to make collections from small roads, and this would seem to be an impairment of the rights of such larger roads in case there should be any financial difficulties whereby the larger roads could not realize on the sales of such tickets. But nevertheless they would be compelled or would honor the tickets sold by the smaller roads. One of the reasons that deters us from suggesting that such tickets should be on sale at the small roads is the fear as to their financial stability and promptness of accounting for scrip that might be honored on other roads.

I would not be permitted, from the advice I have had from the passenger traffic officials, to state that it would be their view that the sale of the tickets should be confined to Class I roads or certain designated Class I roads and should not be allowed to be sold by the

smaller roads. There probably are some Class II roads whose responsibility is beyond question, and I would hesitate to make a definite expression one way or the other without further opportunity for conference on that point.

Except as to facts which have already been presented, carriers have at command no data of a statistical character as a result of experiences of the past in the sales of books over individual carriers and those of a joint character, good in a restricted region, that would afford foundation for definite, accurate conclusions as to what would happen if the commission should, contrary to the earnest representations of the carriers, require the sale of reduced rate scrip ticket. They have avoided mentioning specifically the extent of the possible losses because of this lack of dependable data.

In deference, however, to the request of the commission and as an earnest of their desire to contribute all possible light and assistance, estimates have been made in the form requested by the commission.

(The statements referred to were received in evidence, marked "Carriers' Exhibit No. 47, Witness Fox," and "Carriers' Exhibit No. 48, Witness Fox," and are found as Appendices A and B to the commission's report, 77 I. C. C., pp. 200, 221.)

To simplify the computation, I assume that in round figures the total average revenue derivable from ordinary one-way tickets sold at full normal fares to be about one billion dollars annually. This omits revenues from commutation, surcharge, and all forms of reduced-rate tickets.

286 It is most likely that the total realized from ordinary one-way tickets would be somewhat in excess of one billion dollars, but this factor would not have any considerable effect upon the percentages submitted.

It is a guess, except that we know rather accurately what the surcharge and the commutation are. As to what revenue is derived from the other forms, such as excursion tickets, we have no definite information.

While detailed statistics are not available, it is known that prior to Federal control, when mileage was actively on sale in the several regions of the country, about 18 per cent of the total revenue was obtained from holders of mileage tickets in New England territory; about 20 per cent in trunk-line territory; 20 per cent in southeastern territory; 15 per cent in southwestern territory. In Central Passenger and Western Passenger Association territories, where the 2-cent fare laws existed intrastate during the past 15 years, sales were practically negligible because of the fact such books as were on sale were only available for interstate transportation, the reduction in General Passenger Association territory at the time being only 10 per cent; therefore, the recent experiences in
287 those regions would be of no value as contributing light on this question.

Prior to the 2-cent fare laws, however, mileage tickets were sold very extensively throughout Central Passenger and Western Passenger Association territories, and their utilization was constantly increasing from year to year. In the extreme western part of the United States percentages as a territorial proposition are not available, but it is known that in certain instances in those regions the use of mileage was not so extensive as in the other sections referred to.

The foregoing information really constitutes the basis of my estimate.

As for to Federal control the mileage-ticket discounts were as follows, speaking generally:

New England, 10 per cent; in Central and Trunk Line Passenger Association territories, 10 per cent; in southwestern territory, 20 per cent.

In the Southeast, just prior to Federal control, authority was given by the Interstate Commerce Commission to advance the fare from 2 cents to 2½ cents per mile, but it was necessary to also approach the State commissions for authority to apply like increases intrastate. Before this latter procedure was completed the carriers were taken over by the Railroad Administration.

In southwestern territory the reduction was 16½ per cent; in a major portion of the western territory, 16½ per cent.

In the Central West, when the 2-cent rate was effective throughout the country, there was no reduction on the part of any line from the basic intrastate fares by the use of mileage, and a very considerable portion of the revenue of the carriers was derived from intrastate traffic in those States.

That was the general situation. There were some reductions which ranged greater.

288 The above percentages were intended to reflect conditions immediately prior to Federal control. They applied not only for the particular year prior to Federal control but also for some considerable period prior to Federal control, probably 8 or 10 years in certain territories. I could not tell the average reduction permitted on these mileage books prior to 1914, because there are a considerable number of mileage books sold of different denominations and by the individual roads and territorial books throughout the United States, and while it would be possible to make a tabulation that would give that accurately I could not possibly carry it in my mind. The percentages in times past were in excess of 10 per cent; in some regions running as high as 33½ per cent.

While the carriers have never had effective a nation-wide interchangeable mileage or scrip book of any character, except the present scrip book sold at full normal fare, it is the universal view of the carriers that the sales of such a book would be far in excess of any experiences of the past.

I estimate that 30 per cent of the present one-way travel at full fares would be made on an interchangeable scrip coupon ticket good for \$90 at standard fares, to be sold at \$72, or a reduction of 20 per cent, if such a ticket is issued. This is the best judgment of the carriers, but it is purely speculative.

Now, 30 per cent of the one billion dollars estimated above gives \$300,000,000 as my estimate of the present full fares of those who would use these scrip tickets, at a cost of \$240,000,000, instead of paying full fares.

289 In his testimony before the committee of the House,

David K. Clink stated: "It would seem no discrimination to grant a reasonable concession such as that asked for the traveling men, who spend nine months of the year on the road, averaging 50 miles per day, or 14,500 miles per year, as against the average citizen, who travels less than 100 miles per year. A most conservative estimate places the growing revenues of the carriers of the United States from the commercial travelers alone at \$484,000,000 annually."

I have two statements, one on total railway operating revenues and the other on passenger revenues, by six-months periods since January 1, 1916, which I offer in evidence.

(The statements referred to were received in evidence, marked "Carriers' Exhibit No. 45, Witness Fox," and "Carriers' Exhibit No. 49, Witness Fox," and are side pages 297 and 298 hereof.)

Cross-examination:

290 In my statement regarding mileage ticket discounts in the

Central West, I did not mean to imply that there had not been discounts prior to the 2-cents-a-mile laws. Prior to those laws in Central Passenger Association territory, to take that as an example, a ticket was sold initially at \$30 (the full-fare basis) with a \$10 refund, making a net rate of \$20, or a discount of one-third, and that book was good interstate and intrastate at a net cost to the traveler of 2 cents a mile. After the laws were enacted the book was not good for passage at a reduction from the intrastate 2-cent fare. At a later time the same ticket was sold for \$25 with a \$5 refund, and just prior to Federal control at \$25 with a \$2.50 refund.

In the earlier days books were quite generally issued in different regions of the country at a discount of one-third.

When mileage or scrip books were issued they were good for one year. Two thousand miles was a common denomination in some territories, one thousand miles in others, and five thousand miles in others. In the West they had a five thousand-mile scrip book, and in Louisiana and Texas they had a \$60 book. They had a \$30 book locally within each one of those States. There was a 2,000-mile book in Western Passenger Association territory. The 1,000-mile book was used more largely in the eastern and southern regions.

During the past year the carriers have voluntarily issued a considerable number of excursion tickets at reduced fares, some of which

were one-third reduction from the standard fares. There was a great range in the reduction. Some were 10 per cent. This was done to stimulate travel.

291 WILLIAM P. ROSE, recalled by respondents, testified further:

In response to the request for it I have tried to ascertain some road on which we could show the amount of passenger travel before and after the beginning of the use of a mileage ticket at a reduced rate, and I have conferred with other passenger men on the matter, but we are unable to furnish such information because the use of such mileage tickets began so long ago on all roads in the country that we can not now produce any data as to the travel before and after.

In 1915 the Southern Railway Company had a total of 1,515 employees in the passenger accounting department and the pay roll for the year was \$80,742.32. Of that number 27 were engaged in the audit of the mileage and scrip tickets and the pay roll on that work was \$12,416.75. The percentage of the clerks to the total was 17.88 and the percentage of the cost was 15.38. In 1916 there were 155 employees in the passenger accounting department and the pay roll for the year was \$86,361.82. Of that number 28 were engaged in the audit of the mileage and scrip tickets and the pay roll on that work was \$12,400.83. Percentage as to clerks 16.97; percentage as to cost 14.36. In 1917 there were 173 employees in the passenger accounting department and the pay roll for the year was \$104,627.97. Of that number 29 were engaged in the audit of the mileage and scrip tickets and the pay roll on that work was \$12,589.32. Percentage for

292 clerks 16.76; percentage of cost 18.63. There is no substantial increase of mileage clerks even though there is a substantial increase of passenger business. The average pay per month to employees engaged in the audit of the mileage and scrip tickets was \$38.32 in 1915, \$36.91 in 1916, \$36.18 in 1917. Most of them were young women. The supervisor received a higher salary, but it is included in the computation of the averages just given.

I would not like to say that this situation was fairly indicative of the situation that would exist with other carriers who used mileage books, but I am perfectly satisfied that it would not be less work and that possibly it might be more.

The averages for the total were: 1915, \$44.56; 1916, \$43.62; 1917, \$50.40. For the month of September, 1922, the average for everybody was \$111.60. Now if we had to employ 29 clerks to-day I would say it would take \$2,900 to do it, and they would not be as good as some I got back there for \$38.32. We are short on efficiency these days. I have no reason to believe that if the Southern Railway started this again it would take fewer employees than formerly. It might take more. If we had to employ 29 people to-day we would have to pay them not less than \$2,500 or \$2,900, somewhere around \$100 a month. You can not get a girl for \$30 any more. She wants as much as a man gets.

If you should sell 100 card tickets, say from Washington, to 100 destinations on the issuing road, each and every one of those 293 100 tickets is exactly the same size. You detach 100 pieces of mileage to those 100 destinations and every one of them will be a different size. They might be anywhere from an inch to seven feet long. Many times they are as much as six or seven feet long. There has been a great deal of thought spent on the question of the form of coupon books with a view to making them more convenient to the traveler and more expeditiously handled by the carrier. Not only the railroads but the printers have tried to get some book from which detachments of the same size would be taken, but I do not see how it can be done. Detachments must vary according to the distance. The trouble with coupons of different values would be that they would not fit every situation. When a man first gets his book he may be able to travel to some point for which he could detach exactly enough, but pretty soon, if he traveled much, he would make some trip in which he would not have coupons to cover it exactly. The difficulties would only be accentuated by such a book containing coupons of different denominations. In listing the mileage to a foreign carrier we have to prepare a statement showing how it was listed, and it is the easiest way to show the commencing number and the closing number on the particular detachment. If we had a lot of pieces varying from 50 cents to a dollar, and a quarter and five cents it would be much more difficult to make that statement than if it were just a long list of five-cent pieces.

294 M. O. LORENZ, a witness called by the commission, testified: I am a director of the Bureau of Statistics of the Interstate Commerce Commission.

I have prepared two tabulations, one entitled "Selected items of revenue, expense, and traffic statistics—Class I steam roads, 1916-1922," and the other entitled "Freight service and passenger service operating ratios by districts, 1920 and 1921," which I offer in evidence.

(The two tabulations referred to were received in evidence, marked "Commission's Exhibit No. 50, Witness Lorenz," and are side pages 299 and 300 hereof.)

Whereupon the hearing in the main docket, Docket No. 14104, was concluded, and the commission proceeded to the further consideration of Docket No. 14104, Sub-No. 1, which proceedings are contained in that docket.

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JULY 1922
PRELIMINARY REPORT OF REVENUES AND EXPENSES
CLASS I ROADS AND LARGE SWITCHING & TERMINAL COMPANIES

Item and District	Month of July			7 months period ended July 31		
	1922	1921	% of increase	1922	1921	% of increase
TOTAL OPERATING REVENUES:						
Eastern District (Incl. Poca. Reg.)	\$213 421 370	\$225 365 861	d 5.3	\$1 509 898 526	\$1 535 200 411	d 1.6
Southern District (Excl. Poca. Reg.)	53 063 607	54 098 833	d 1.9	400 288 494	396 791 212	d 0.9
Western District	176 698 015	183 474 993	d 3.7	1 144 344 016	1 204 980 182	d 5.0
Total - United States	443 182 992	462 939 687	d 4.3	3 054 531 036	3 136 971 805	d 2.6
TOTAL MAINTENANCE EXPENSES:						
Eastern District (Incl. Poca. Reg.)	75 332 230	79 412 474	d 5.1	539 212 230	578 314 925	d 6.8
Southern District (Excl. Poca. Reg.)	18 876 233	21 065 282	d 10.4	136 957 586	153 216 422	d 10.6
Western District	49 969 736	59 977 070	d 16.7	405 112 239	439 970 283	d 7.9
Total - United States	144 178 199	160 454 826	d 10.1	1 081 282 055	1 171 501 630	d 7.7
TOTAL OPERATING EXPENSES:						
Eastern District (Incl. Poca. Reg.)	173 585 843	179 714 172	d 3.4	1 199 960 281	1 347 701 650	d 11.0
Southern District (Excl. Poca. Reg.)	43 134 458	46 454 983	d 7.1	312 377 412	356 261 449	d 12.3
Western District	124 005 509	136 587 110	d 9.2	907 254 692	1 019 946 404	d 11.0
Total - United States	340 725 810	362 756 265	d 6.1	2 419 602 385	2 723 909 503	d 11.2
NET RAILWAY OPERATING INCOME:						
Eastern District (Incl. Poca. Reg.)	24 165 406	31 054 374	d 22.2	211 988 243	98 308 999	115.6
Southern District (Excl. Poca. Reg.)	6 479 120	4 703 022	37.8	61 007 234	18 316 189	233.1
Western District	38 594 506	33 566 805	15.0	145 275 616	98 088 284	48.1
Total - United States	69 239 032	69 324 201	d 0.1	418 271 093	214 713 472	94.8
RATE EARNED - ANNUAL BASIS:						
Eastern District (Incl. Poca. Reg.)	2.85	3.67	-	4.76	2.21	-
Southern District (Excl. Poca. Reg.)	4.38	3.18	-	5.04	1.51	-
Western District	5.36	4.66	-	3.70	2.50	-
Total - United States	4.04	4.04	-	4.36	2.24	-

Average mileage Eastern District 64,595; Southern District 38,395; Western District 132,231; United States 235,221.

d Denotes decrease.

NOTE: "Rate earned - annual basis" is based on the tentative valuation as fixed by the Interstate Commerce Commission, plus additions and betterments to Sept. 30, 1921. The rate is computed after taking into account seasonal fluctuations in traffic and earnings.

Bureau of Railway Economics
 Washington, D. C. Sept. 8, 1922.

If you should sell 100 card tickets, say from Washington, to 100 destinations on the issuing road, each --

	valuation	income	per cent	per cent
<u>1 MONTH - JANUARY, 1922:</u>				
Eastern District (Incl. Poca. Reg.)	\$28 417 295	\$19 189 616	\$9 227 679	4.05
Southern District (Excl. Poca. Reg.)	9 960 470	4 514 387	5 446 083	2.72
Western District	27 311 123	5 772 419	21 538 704	1.27
Total - United States	65 688 888	29 476 422	36 212 466	2.69
<u>2 MONTHS - JAN. 1, 1922 TO FEB. 28, 1922:</u>				
Eastern District (Incl. Poca. Reg.)	53 119 313	48 763 293	4 356 020	5.51
Southern District (Excl. Poca. Reg.)	20 593 944	11 563 532	9 030 412	3.37
Western District	54 622 246	16 977 886	37 644 360	1.86
Total - United States	128 335 503	77 304 711	51 030 792	3.61
<u>3 MONTHS - JAN. 1, 1922 TO MARCH 31, 1922:</u>				
Eastern District (Incl. Poca. Reg.)	89 936 846	96 669 107		6.45
Southern District (Excl. Poca. Reg.)	33 919 437	22 798 487	11 120 950	4.03
Western District	90 374 989	41 531 835	48 843 154	2.76
Total - United States	214 231 272	160 999 429	53 231 843	4.51
<u>4 MONTHS - JAN. 1, 1922 TO APRIL 30, 1922:</u>				
Eastern District (Incl. Poca. Reg.)	126 026 077	123 310 284	2 715 793	5.87
Southern District (Excl. Poca. Reg.)	44 283 709	32 514 142	11 769 567	4.41
Western District	120 665 508	55 468 967	65 196 541	2.76
Total - United States	290 975 294	211 293 393	79 681 901	4.36
<u>5 MONTHS - JAN. 1, 1922 TO MAY 31, 1922:</u>				
Eastern District (Incl. Poca. Reg.)	167 738 092	155 047 671	12 690 421	5.55
Southern District (Excl. Poca. Reg.)	54 513 380	43 818 870	10 694 510	4.82
Western District	153 935 422	74 392 470	79 542 952	2.90
Total - United States	376 186 894	273 259 011	102 927 883	4.36
<u>6 MONTHS - JAN. 1, 1922 TO JUNE 30, 1922:</u>				
Eastern District (Incl. Poca. Reg.)	216 252 098	187 883 726	28 368 372	5.21
Southern District (Excl. Poca. Reg.)	63 800 845	54 528 110	9 272 735	5.13
Western District	192 170 995	106 681 109	85 489 886	3.33
Total - United States	472 223 938	349 092 945	123 130 993	4.44
<u>7 MONTHS - JAN. 1, 1922 TO JULY 31, 1922:</u>				
Eastern District (Incl. Poca. Reg.)	267 024 776	211 988 243	55 036 533	4.76
Southern District (Excl. Poca. Reg.)	72 684 507	61 007 235	11 677 272	5.04
Western District	235 372 227	145 275 616	90 096 611	3.70
Total - United States	575 081 510	418 271 094	156 810 416	4.36

NOTE: "Six per cent on tentative valuation" is computed on the tentative valuation made by the Interstate Commerce Commission in Ex Parte 74 for rate making purposes, adjusted by the Bureau of Railway Economics to apply to railways of Class I, and to include the net amount of additions from January 1, 1920 to September 30, 1921. This tentative valuation has not been accepted by the railways as representing the true value of railway property devoted to the public service. The six per cent is allocated to the several months on the basis of monthly variations in railway operating income, so as to reflect seasonal fluctuations in traffic and earnings. This monthly distribution follows the actual average results of the five-year period ended December 31, 1916.

Bureau of Railway Economics

Washington, D. C. Sept. 20, 1922.

THESE ARE THE RESULTS OF THE
ANALYSIS OF THE SAMPLES
OBTAINED FROM THE
WATER OF THE RIVER IN THE
MONTH OF MAY, 1900.

DATE	TEMPERATURE	WIND	WAVE	WATER	WIND	WAVE	WATER
1900 MAY 1	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 2	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 3	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 4	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 5	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 6	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 7	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 8	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 9	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 10	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 11	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 12	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 13	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 14	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 15	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 16	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 17	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 18	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 19	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 20	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 21	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 22	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 23	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 24	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 25	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 26	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 27	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 28	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 29	68.0	SE	1-2	1.0	SE	1-2	1.0
1900 MAY 30	68.0	SE	1-2	1.0	SE	1-2	1.0

THESE ARE THE RESULTS OF THE
ANALYSIS OF THE SAMPLES
OBTAINED FROM THE
WATER OF THE RIVER IN THE
MONTH OF MAY, 1900.

PASSENGER REVENUES - CLASS I RAILWAYS

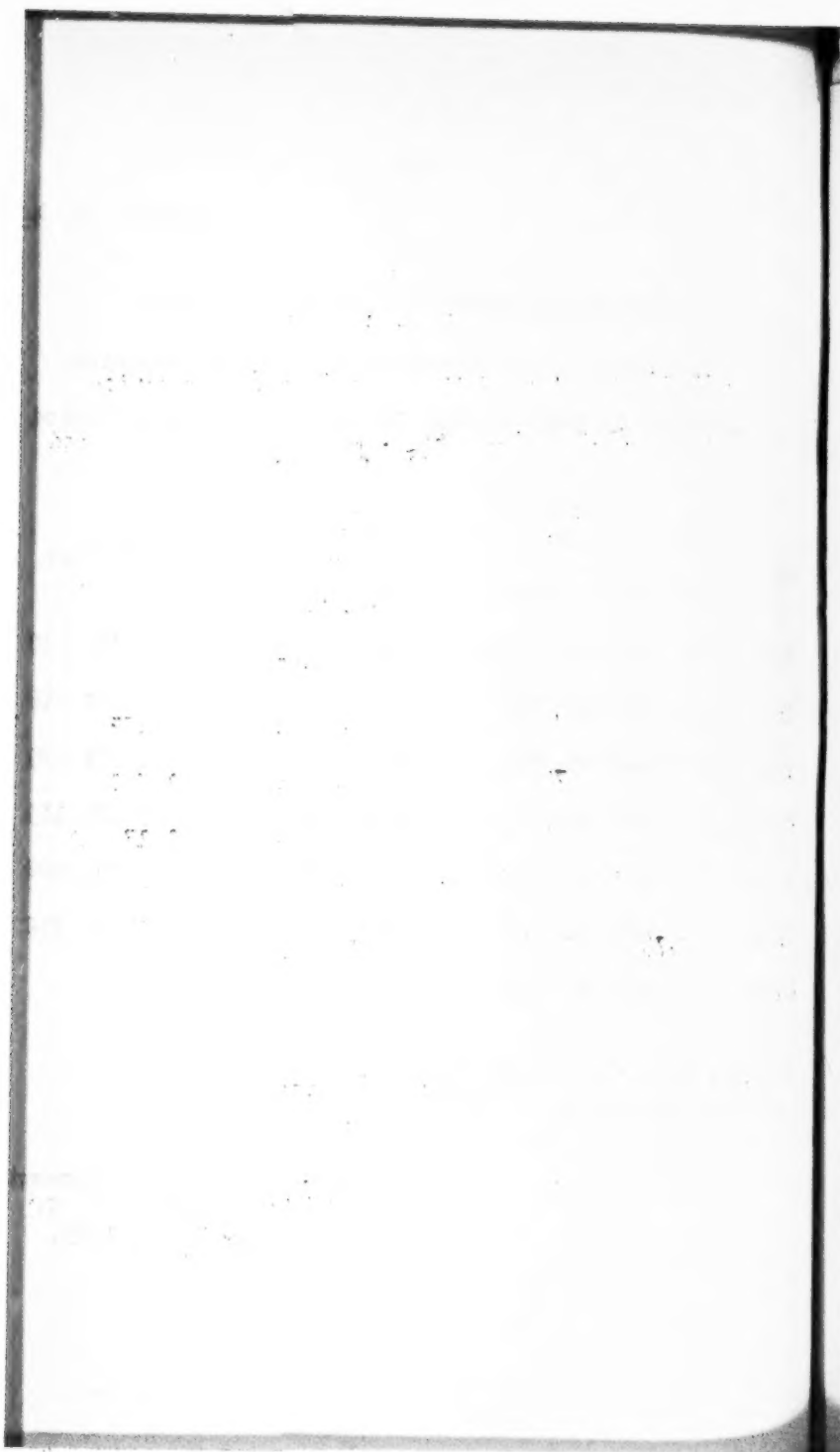
Including Large Switching & Terminal Companies

January 1, 1916 to June 30, 1922 in 6 Months Period

Year	First 6 months	Second 6 months	Year
	Jan. - June	July - Dec.	
1916	315 420 520	392 600 463	708 020 983
1917	360 620 773	466 595 801	827 216 574
1918	448 208 768	583 020 498	1 031 229 266
1919	542 809 826	635 310 128	1 178 119 954
1920	567 010 780	721 797 379	1 288 808 159
1921	575 142 585	578 609 417	1 153 752 002
1922	502 851 949		

SOURCE: From Interstate Commerce Commission
monthly summaries of Revenues & Expenses.

Bureau of Railway Economics
Washington, D. C.
September, 1922.



Item

1.	Railway operating revenues, total	\$
2.	Passenger revenue	
3.	Railway operating expenses	
4.	Operating ratio-total (%)	
5.	Freight (%)	
6.	Passenger and allied service (%)	
7.	Net railway operating income	
8.	Return on book value (%)	
9.	Amount of book value used for item 8	
10.	Valuation in increased rates 1920, adjusted for Class I Roads	
10A.	Return on value in item 10.....	
11.	Passenger train miles, excl. mixed	
12.	Pass. train loco. miles excl. mixed	
13.	Pass. train car miles, total	
14.	Passenger	
15.	Sleeping, parlor and observation	
16.	Dining	
17.	Other	
18.	No. of revenue passengers carried	
19.	No. of revenue passenger miles	
20.	Passengers per train	
21.	Passengers per car	
22.	Average journey per passenger	
23.	Revenue per passenger per road	\$
24.	Revenue per passenger mile (cts.)	
25.	Commutation passengers in item 18	
26.	Commutation pass. miles in item 19	
27.	Commutation pass. revenue in item 2	
.	Other than commutation traffic:	
28.	Passengers	
29.	Passenger miles	
30.	Average journey	
31.	Revenue per pass. mile (cts.)	
32.	Amount of surcharge in item 2	

Selected Items of Revenue, Expense and Traffic Statistics - Class I Steam Roads, 1916 - 1922.
(Including Switching and Terminal Companies in items 1-10 Incl.)

Year ended December 31.						6 months ended June 30, 1921	6 m en Jun
1916	1917	1918	1919	1920	1921		
\$ 3,625,252,371	\$ 4,050,463,579	\$ 4,926,593,957	\$ 5,184,064,221	\$ 6,225,417,245	\$ 5,563,232,215	\$ 2,676,181,270	\$ 2,611,
707,757,469	827,216,574	1,032,671,429	1,180,010,266	1,287,423,443	1,153,752,002	574,939,925	502,
2,376,372,042	2,858,212,210	4,017,209,501	4,419,441,949	5,830,326,686	4,597,479,241	2,363,343,960	2,078,
65.55	70.57	81.54	85.25	93.65	82.64	88.31	7
*	*	*	*	98.06	81.79	*	
1,051,543,860	974,778,937	693,111,170	516,290,090	58,151,863	614,810,531	145,485,019	349,
...	...	...	2.70	0.29	3.06	...	
...	...	...	19,090,115,837	19,694,622,226	20,073,336,550**	...	
...	...	...	17,994,000,000	18,599,000,000	...	...
...	...	...	2.87	0.31	...	...
576,094,139	575,500,297	529,443,568	539,803,363	560,498,342	554,799,797	# 271,492,000	# 265,
584,468,866	585,734,762	538,653,099	550,591,102	572,852,229	561,514,778	# 283,249,000	# 277,
3,359,598,615	3,438,682,449	3,239,548,837	3,413,342,601	3,578,158,498	3,469,039,193	# 1,705,041,000	# 1,667,
1,378,055,293	1,387,285,845	1,349,001,171	1,388,353,268	1,441,948,898	1,372,557,168	# 664,025,145	# 629,
800,097,475	847,720,522	736,102,889	829,153,007	881,040,639	862,035,235	# 424,867,798	# 430,
123,179,507	125,639,425	107,360,494	109,797,564	121,101,953	118,541,258	# 59,468,061	# 59,
1,058,266,340	1,078,036,657	1,047,084,283	1,086,038,762	1,134,067,008	1,115,905,532	# 556,681,005	# 547,
1,005,954,777	1,066,638,474	1,084,997,896	1,177,820,454	1,234,762,043	1,034,496,329	527,041,000	475,
34,585,952,026	39,476,858,549	42,676,579,199	46,358,303,740	46,848,667,987	37,312,585,966	18,382,451,000	16,487,
57	65	76	82	80	67	66	
16	17	20	21	20	16	16	
34.38	37.01	39.33	39.36	37.94	36.07	34.88	3
0.702	0.773	0.949	0.999	1.042	1.113	1.090	
2.042	2.090	2.414	2.540	2.747	3.086	3.127	
...	
...	
...	...	...	...	...	...	...	3,
...	...	...	...	...	...	...	\$33,
...	
...	...	...	...	...	...	...	13,
...	...	...	...	...	...	...	5,
...	...	...	...	\$ 12,014,911	\$ 32,601,960	\$ 16,023,105	\$ 14,

* Not compiled

** Preliminary figure

Including a proportion of mixed train service

Expense and Traffic Statistics - Class I Steam Roads, 1916 - 1922.
(Switching and Terminal Companies in items 1-10 Incl.)

ended December 31.						6 months ended June 30, 1921	6 months ended June 30, 1922
1918	1919	1920	1921				
\$ 593,957	\$ 5,184,064,221	\$ 6,225,417,245	\$ 5,563,232,215	\$ 2,676,181,270	\$ 2,611,125,035		
671,429	1,180,010,266	1,287,423,443	1,153,752,002	574,939,925	502,851,949		
209,501	4,419,441,949	5,830,326,686	4,597,479,241	2,363,343,960	2,072,672,589		
51.54	85.25	93.65	82.64	88.31	79.61		
*	*	98.06	81.79	*	*		
*	*	84.74	85.24	*	*		
111,170	516,290,090	58,151,863	614,810,531	145,485,019	349,092,945		
...	2.70	0.29	3.06	...	...
...	19,090,115,837	19,694,622,226	20,073,336,550**	...	...
...	17,994,000,000	18,599,000,000	...	...	...
...	2.87	0.31	...	...	...
443,568	539,803,363	560,498,342	554,799,797	# 271,492,000	# 265,395,000		
653,099	550,591,102	572,852,229	561,514,778	# 283,249,000	# 277,250,000		
548,837	3,413,342,601	3,578,158,498	3,469,039,193	#1,705,041,000	#1,667,077,000		
001,171	1,388,353,268	1,441,948,898	1,372,557,168	# 664,025,145	# 629,820,144		
102,889	829,153,007	881,040,639	862,035,235	# 424,867,798	# 430,578,861		
360,494	109,797,564	121,101,953	118,541,258	# 59,468,061	# 59,429,589		
084,283	1,086,038,762	1,134,067,008	1,115,905,532	# 556,681,005	# 547,246,537		
997,896	1,177,820,454	1,234,762,043	1,034,496,329	527,041,000	475,015,000		
579,199	46,358,303,740	46,848,667,987	37,312,585,966	18,382,451,000	16,487,117,000		
76	82	80	67	66	60		
20	21	20	16	16	15		
39.33	39.36	37.94	36.07	34.88	34.71		
0.949	0.999	1.042	1.113	1.090	1.052		
2.414	2.540	2.747	3.086	3.127	3.049		
...	...	...	...	...	213,375		
...	...	...	...	...	3,004,182		
...	...	...	...	...	\$33,373,645		
...	...	...	...	...	261,641		
...	...	...	...	...	13,482,935		
...	...	...	...	...	51,53		
...	...	...	...	...	3.481		
...	...	\$ 12,014,911	\$ 32,601,960	\$ 16,023,105	\$ 14,947,096		

Remarks

The purpose of this statement is to show the trend of railroad Earnings and Expenses as a whole, and more particularly the trend of passenger traffic in recent years. As the statistics for 1922 are available for only a part of the year, a column for the same part of 1921 is also included for comparison. Thus, the statement in items 18 and 19 shows a decline in passenger traffic in the first half of 1922 as compared with the same period in 1921 and the year 1921 as a whole fell below the year 1920 in the same respect.

The separation of commutation traffic from other passenger traffic was only recently begun.

of mixed train service

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EXHIBIT NO. 5

Freight service and passenger service opera

Item.	Eastern District.		Southern District.
	1921	1920	1921
	\$	\$	\$
Freight service revenues	1,790,814,157	2,002,951,891	661,797,467
Passenger and allied revenues	669,976,494	744,431,387	215,363,043
Total operating revenues	2,460,790,651	2,747,383,278	877,160,510
Freight service expenses	1,518,050,545	2,069,008,756	554,512,678
Passenger and allied service expenses	564,533,357	661,063,437	185,711,272
Total operating expenses	2,082,583,902	2,730,072,193	740,223,950
Operating ratio:			
Freight service	84.77	103.30	83.79
Passenger and allied service	84.26	83.80	86.23

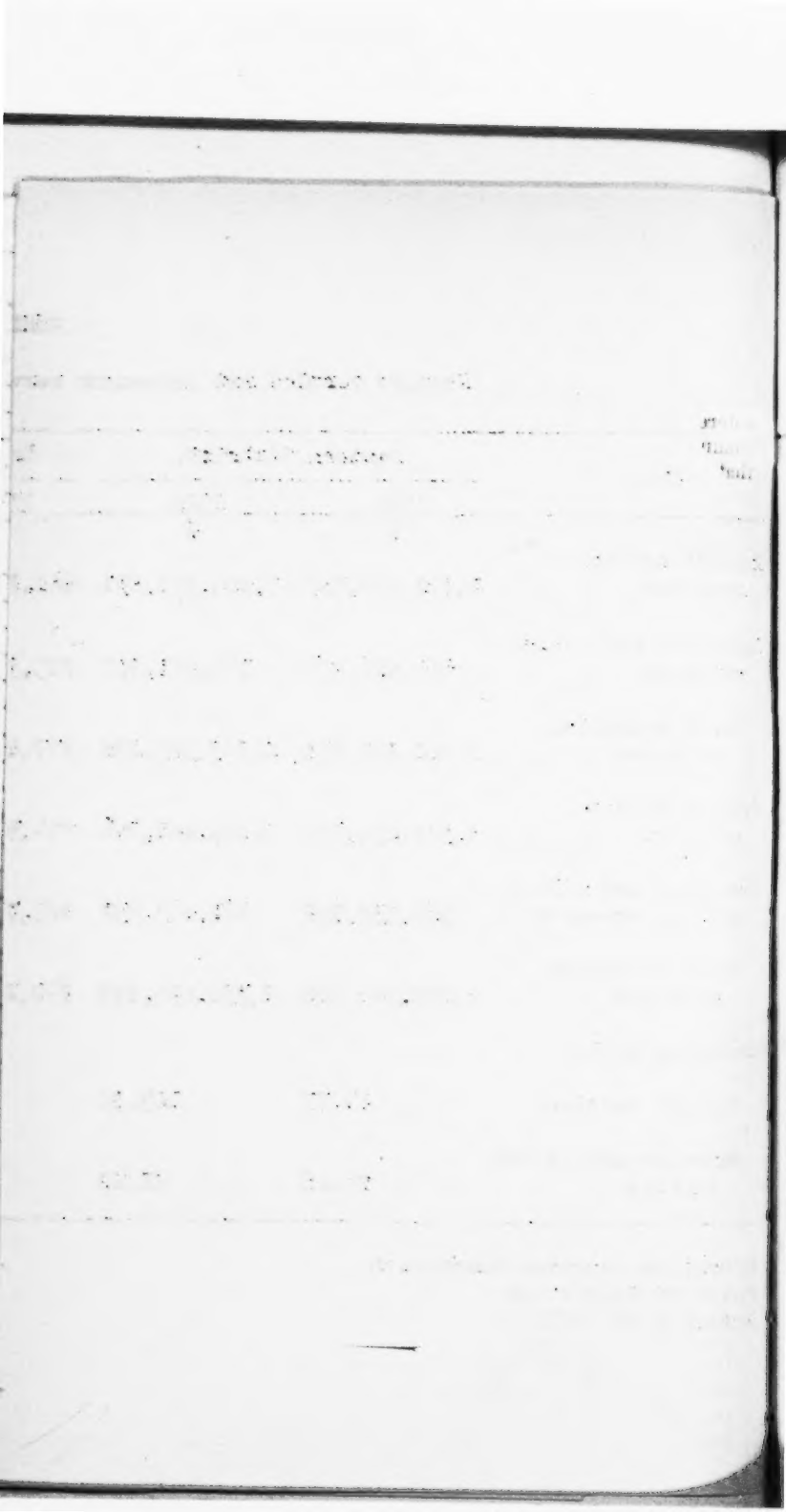
Interstate Commerce Commission,
Bureau of Statistics.
September 28, 1922.

EXHIBIT NO. 50, page 2

Passenger service operating ratios by districts, 1920 and 1921.

22391.

	Southern District.		Western District.		United States.	
	1921	1920	1921	1920	1921	1920
	\$	\$	\$	\$	\$	\$
.891	661,797,467	720,680,654	1,596,144,392	1,746,896,761	4,048,756,016	4,470,529,306
.387	215,363,043	256,150,588	582,460,902	707,009,697	1,467,800,439	1,707,591,672
.278	877,160,510	976,831,242	2,178,605,294	2,453,906,458	5,516,556,455	6,178,120,978
.756	554,512,678	702,434,500	1,238,916,298	1,612,231,640	3,311,479,521	4,383,674,896
.437	185,711,272	210,272,681	500,944,152	575,609,478	1,251,188,781	1,446,945,596
.193	740,223,950	912,707,181	1,739,860,450	2,187,841,118	4,562,668,302	5,830,620,492
3.30	83.79	97.47	77.62	92.29	81.79	98.06
8.80	86.23	82.09	86.00	81.41	85.24	84.74



301 [Title omitted.]

In United States District Court.

Stipulation as to evidence for record on appeal.

Filed July 26, 1923.

In the above-entitled cause it is stipulated that an order may be made approving the statement of evidence before the Interstate Commerce Commission prepared by the appellants and providing that the transcript on appeal shall contain the portions of the record stated in the præcipes filed by the parties with the exception that it shall contain said statement of evidence in place of the certified copy of record before the Interstate Commerce Commission.

ROBERT O. HARRIS,

By ESSEX S. ABBOTT,

United States Attorney, District of Massachusetts.

BLACKBURN ESTERLINE,

By ESSEX S. ABBOTT,

Assistant to the Solicitor General.

P. J. FARRELL,

By WM. B. HUNTER,

Solicitor for Interstate Commerce Commission.

HOKE SMITH,

SAMUEL BLUMBERG,

POWERS & HALL,

JAMES N. CLARK,

Solicitors for National Council of Traveling

Salesmen's Associations et al.

CHAS. F. CHOATE, Jr.,

JAMES GARFIELD,

Solicitors for Appellees.

302

In United States District Court.

Citation and service of the National Council of Traveling Salesmen's Associations et al.

UNITED STATES OF AMERICA, ss:

The President of the United States to the New York Central Railroad Company; Atlantic City Railroad Company; Atlantic & St. Lawrence Railroad Company; Baltimore, Chesapeake & Atlantic Railway Company; Bangor & Aroostook Railroad Company; Boston & Maine Railroad; Buffalo, Rochester & Pittsburgh Railway Company; Central New England Railway Company; The Central Railroad Company of New Jersey; Central Vermont Railway Company; The Chicago & Erie Railroad Company; The Chesapeake & Ohio Railway Company; Chicago, Detroit & Canada Grand Trunk Junction Railroad Company; The Cincinnati, Indianapolis & Western Railroad Company; The Cincinnati Northern Railroad Company; The Cincinnati, Lebanon & Northern Railway Company;

The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; The Delaware & Hudson Company; The Delaware, Lackawanna & Western Railroad Company; Detroit, Grand Haven & Milwaukee Railway Company; Detroit & Toledo Shore Line Railroad Company; Erie Railroad Company; Grand Rapids & Indiana Railway Company; Grand Trunk Western Railway Company; The Lake Erie & Western Railroad Company; Lehigh Valley Railroad Company; The Long Island Railroad Company; Maine Central Railroad Company; Maryland, Delaware & Virginia Railway Company; The Michigan Central Railroad Company; The Monongahela Railway Company; New Jersey & New York Railroad Company; The New York, Chicago & St. Louis Railroad Company; New York Connecting Railroad Company; The New York, New Haven & Hartford Railroad Company; New York, Ontario & Western Railway Company; New York, Susquehanna & Western Railroad Company; The Pennsylvania Railroad Company; The Philadelphia & Reading Railway Company; The Pittsburgh & Lake Erie Railroad Company; The Pittsburgh, Shawmut & Northern Railroad Company and Henry S. Hastings, receiver; Port Reading Railroad Company; Richmond, Fredericksburg & Potomac Railroad Company; The Rutland Railroad Company; Toledo, St. Louis & Western Railroad Company; West Jersey & Seashore Railroad Company; Western Maryland Railway Company, and The Wheeling & Lake Erie Railway Company, and Baltimore & Ohio Railroad Company; Wabash Railway Company; Pere Marquette Railway Company; and Chicago, Indianapolis & Louisville Railway Company, greeting:

303 You are hereby cited and admonished to be and appear in the Supreme Court of the United States in the city of Washington, District of Columbia, within thirty (30) days from the date hereof, pursuant to an appeal duly filed in the clerk's office of the United States District Court for the District of Massachusetts, wherein National Council of Traveling Salesmen's Associations et al. and Garment Salesmen's Association, Inc., are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Julian W. Mack, United States circuit judge, the Honorable George F. Morris and the Honorable Elisha H. Brewster, United States district judges, this fifteenth day of May, A. D. 1923.

JULIAN W. MACK,
United States Circuit Judge.
GEORGE F. MORRIS,
ELISHA H. BREWSTER,
United States District Judges.

Service of the foregoing citation and the receipt of a copy thereof is hereby acknowledged this 15th day of May, 1923.

CHAR. F. CHOATE, Jr.,
Solicitor for All Appellees.

Citation and service of the United States of America and Interstate Commerce Commission.

UNITED STATES OF AMERICA, ss:

The President of the United States to The New York Central Railroad Company; Atlantic City Railroad Company; Atlantic & St. Lawrence Railroad Company; Baltimore, Chesapeake & Atlantic Railway Company; Bangor & Aroostock Railroad Company; Boston & Maine Railroad; Buffalo, Rochester & Pittsburgh Railway Company; Central New England Railway Company; The Central Railroad Company of New Jersey; Central Vermont Railway Company; The Chicago & Erie Railroad Company; The Chesapeake & Ohio Railway Company; Chicago, Detroit & Canada Grand Trunk Junction Railroad Company; The Cincinnati, Indianapolis & Western Railroad Company; The Cincinnati Northern Railroad Company; The Cincinnati, Lebanon & Northern Railway Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; The Delaware & Hudson Company; The Delaware, Lackawanna & Western Railroad Company; Detroit, Grand Haven & Milwaukee Railway Company; Detroit & Toledo Shore Line Railroad Company; Erie Railroad Company; Grand Rapids & Indiana Railway Company; Grand Trunk Western Railway Company; The Lake Erie & Western Railroad Company; Lehigh Valley Railroad Company; The Long Island Railroad Company; Maine Central Railroad Company; Maryland, Delaware & Virginia Railway Company; The Michigan Central Railroad Company; The Monongahela Railway Company; New Jersey & New York Railroad Company; The New York, Chicago & St. Louis Railroad Company; New York Connecting Railroad Company; The New York, New Haven & Hartford Railroad Company; New York, Ontario & Western Railway Company; New York, Susquehanna & Western Railroad Company; The Pennsylvania Railroad Company; The Philadelphia & Reading Railway Company; The Pittsburgh & Lake Erie Railroad Company; The Pittsburgh, Shawmut & Northern Railroad Company and Henry S. Hastings, receiver; Port Reading Railroad Company; Richmond, Fredericksburg & Potomac Railroad Company; The Rutland Railroad Company; Toledo, St. Louis & Western Railroad Company; West Jersey & Seashore Railroad Company; Western Maryland Railway Company, and The Wheeling & Lake Erie Railway Company, and Baltimore & Ohio Railroad Company; Wabash Railway Company, Pere Marquette Railway Company, and Chicago, Indianapolis & Louisville Railway Company, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States in the city of Wash-

ington, District of Columbia, within thirty (30) days from the date hereof, pursuant to an appeal duly filed in the clerk's office of the United States District Court for the District of Massachusetts, wherein United States of America and Interstate Commerce Commission are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Julian W. Mack, United States circuit judge, the Honorable George F. Morris and the Honorable Elisha H. Brewster, United States district judges, this fifteenth day of May, A. D. 1923.

JULIAN W. MACK,
United States Circuit Judge.

GEORGE F. MORRIS,

ELISHA H. BREWSTER,

United States District Judges.

Service of the foregoing citation and the receipt of a copy thereof is hereby acknowledged this 15th day of May, 1923.

CHAS. F. CHOATE, Jr.,
Solicitor for All Appellees.

308

In United States District Court.

Clerk's certificate.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, James S. Allen, clerk of the District Court of the United States for the District of Massachusetts, do hereby certify that the foregoing is the transcript of record on appeal, including true copies of such proofs, entries, and papers on file as have been designated by precepts, in the cause in equity entitled No. 1808, The New York Central Railroad Company et al., petitioners, v. The United States of America et al., respondents, in said District Court determined, together with the original citations and the acknowledgments of service thereon.

I further certify that the order of court annexed hereto is a true copy of the order entered upon the stipulation of parties, filed July 26, 1923, relative to the statement of evidence before the Interstate Commerce Commission to be incorporated in the record on appeal.

In testimony whereof, I hereunto set my hand and affix the seal of said District Court, at Boston, in said district, this twenty-eighth day of July, A. D. 1923.

[SEAL.]

JAMES S. ALLEN, *Clerk.*

307 In the District Court of the United States, District of
Massachusetts.

[Title omitted.]

Order settling statement of evidence.

July 26, 1923.

Upon the stipulation of the parties, it is

Ordered, That the statement of evidence before the Interstate Commerce Commission prepared by the appellants be, and the same hereby is, approved, and that the transcript on appeal shall contain the portions of the record stated in the præcipes filed by the parties, with the exception that it shall contain said statement of evidence in place of the certified copy of record before the Interstate Commerce Commission.

ELISHA H. BREWSTER,
U. S. District Judge.

GEORGE F. MORRIS,
U. S. District Judge.

308 District Court of the United States, District of Massachusetts.

[Title omitted.]

Order enlarging time.

May 15, 1923.

For good cause shown, it is ordered that the time within which to prepare the transcripts of record and docket the appeals in the Supreme Court of the United States be, and the same is hereby, enlarged to and including August first, 1923.

J. W. MACK,
United States Circuit Judge.

GEORGE F. MORRIS,
ELISHA H. BREWSTER,
United States District Judges.

(Indorsement on cover:) File No. 29,779. Massachusetts D. C., U. S. Term No. 469. The United States of America, The Interstate Commerce Commission, National Council of Traveling Salesmen's Associations, et al., appellants, vs. The New York Central Railroad Company, Atlantic City Railroad Company, Atlantic & St. Lawrence Railroad Company, et al. Filed July 31st, 1923. File No. 29,779.